

EXHIBIT 15

Dondero - 5-28-2021

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In re:

HIGHLAND CAPITAL
MANAGEMENT, LP,

Debtor,

HIGHLAND CAPITAL MANAGEMENT,
LP,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

)
)
) Case No.
) 19-34054 L.P.
) Chapter 11
)
)
)
)
) Adversary No.
) 21-03003-sgi
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)

REMOTE DEPOSITION OF

JAMES DONDERO

Pages 103 - 282

Dallas, Texas

Friday, 28th day of May, 2021

Job No. 194690

Reported by:

Daniel J. Skur, Notary Public and CSR

Dondero - 5-28-2021

28th day of May, 2021

9:33 a.m. - 1:59 p.m.

Remote Deposition of JAMES DONDERO,

located in Dallas, Texas, before Daniel J.

Skur, Notary Public and Certified Shorthand

Reporter in and for the State of Texas

located in Waxahachie, Texas.

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A P P E A R A N C E S:

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BY: Deborah Deitsch-Perez

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Dallas, Texas 75201

BY: Paige Montgomery, Esq.

ALSO PRESENT:

Davor Rukavina, NexPoint

La Asia Canty

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IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the respective
parties herein, that filing and sealing be and
the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of
the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to and
signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

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P R O C E E D I N G S

REMOTE ORAL DEPOSITION OF

JAMES DONDERO

(REPORTER NOTE: This deposition is being conducted remotely in accordance with the Current Emergency Order regarding the COVID-19 State of Disaster.

Today's date is the 28th day of May, 2021. The time is 9:33 a.m. Daylight Savings Time. The witness is located in Dallas, Texas.)

JAMES DONDERO,

having been duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(9:33 A.M.)

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Dondero.

A. Morning.

Q. It's John Morris, again, from Pachulski on behalf of the debtor. We're here for your deposition today.

Do you understand that?

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2 A. Yes.

3 Q. Okay. We've done this a few times,
4 so I'm going to kind of cut to the chase; but I
5 do want to remind you that we're going to be
6 looking at a number of documents today.

7 And because of the difficulty
8 sometimes of doing this on a Zoom or by video,
9 if, at any time, you believe you need to see
10 other portions of the document, please let me
11 know that. Okay?

12 A. Sure.

13 Q. Okay.

14 MR. MORRIS: Can we put up the first
15 exhibit, please?

16 (Exhibit 1 introduced.)

17 BY MR. MORRIS:

18 Q. Okay. This is a document that's got
19 a title, "Promissory Note." It's dated
20 February 2, 2018, and the amount of the note is
21 \$3,825,000.

22 Do you see that?

23 A. Yes.

24 MR. MORRIS: Can we just go to the
25 signature line, please?

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2 BY MR. MORRIS:

3 Q. Is that your signature, sir?

4 A. I believe that's my assistant on my
5 behalf.

6 Q. Did you authorize --
7 (Audio distortion.)

8 A. I'm sorry?

9 BY MR. MORRIS:

10 Q. I don't want to step on your words.
11 Were you finished with your answer?

12 MS. DEITSCH-PEREZ: Yeah. Can
13 you -- yeah, can you ask it again?

14 MR. MORRIS: Sure.

15 BY MR. MORRIS:

16 Q. Is that your signature, sir?

17 A. Yes, for -- yes.

18 MR. MORRIS: Can we go back to the
19 top of the document?

20 BY MR. MORRIS:

21 Q. And was this document signed on or
22 around February 2, 2018?

23 A. Yes.

24 Q. Did you receive \$3,825,000 from the
25 debtor on or around February 2nd, 2018?

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2 A. I -- I believe so. I don't have
3 direct awareness, but I believe so.

4 Q. Okay. And did you sign this
5 promissory note in exchange for that cash that
6 you believe you received?

7 A. Yes.

8 Q. Okay. Are you familiar with the
9 term "demand note"?

10 A. Yes.

11 Q. Can you describe for me your
12 understanding of what a demand note is?

13 A. It's a note that's -- maturity is
14 defined by the term "demand" versus a -- a
15 stipulated date.

16 Q. And if we look down to paragraph 2,
17 at the time that you signed this document on
18 February 2, 2018, did you understand, based on
19 paragraph 2, that you were signing a demand
20 note, as you've characterized it?

21 A. Yes.

22 Q. Okay.

23 MR. MORRIS: Can we go back to the
24 top of the document?

25 BY MR. MORRIS:

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Q. Is it fair to say that under this demand note, you promised to pay Highland Capital Management, L.P., the sum of \$3,825,000?

A. Yes.

Q. Okay. And at the time that you signed this document on February 2nd, 2018, did you intend to repay to Highland Capital Management, L.P., \$3,825,000 plus interest?

A. Yes.

Q. And at the time you signed this document, did you intend to repay the principal amount plus interest upon demand by HCMLP?

A. Whatever was appropriate to pay, what hadn't been paid if it -- if it had -- yeah, if it had -- whatever the terms are, the terms are.

Q. Okay. Did you read the promissory note before you signed it?

A. No.

Q. Is there anything about the promissory note today that you don't understand?

A. I haven't looked at it closely. I'm

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aware of it but -- you know, but I'm not aware.
I haven't looked at it closely.

Q. Well, but you do know that the
debtor has sued you to collect on this note,
right?

A. Yes.

Q. Okay. And can you identify anything
in this note today that you don't understand?

MS. DEITSCH-PEREZ: Object to the
form.

A. Again, I don't want to make any
legal interpretation or analysis of the
contract.

BY MR. MORRIS:

Q. And I appreciate that.

And to be clear, I'm not asking you
for any legal opinion or any legal analysis.
I'm asking for facts.

As a factual matter, as a layperson,
is there anything about this note today that
you do not understand?

MS. DEITSCH-PEREZ: Object, no
foundation.

A. And I can't say.

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2 BY MR. MORRIS:

3 Q. Okay. You're not aware of anything;
4 is that fair?

5 MS. DEITSCH-PEREZ: Object, no
6 foundation.

7 A. No. I'm saying I can't give an
8 opinion.

9 BY MR. MORRIS:

10 Q. All right. I'll try one more time a
11 slightly different way.

12 Can you identify any language in
13 this promissory note that you, as the maker of
14 the note and as a layperson, as a matter of
15 fact, do not understand?

16 MS. DEITSCH-PEREZ: Objection, no
17 foundation.

18 A. I -- I don't have -- I haven't
19 reviewed it. I don't have a comment.

20 BY MR. MORRIS:

21 Q. At the time that you signed this,
22 did you believe that this note reflected all of
23 the terms and conditions with respect to the
24 subject matter of the note?

25 MS. DEITSCH-PEREZ: Object, no

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2 foundation.

3 A. Yeah, I believe largely at the time,
4 yes.

5 BY MR. MORRIS:

6 Q. In fact, if we go to paragraph 8,
7 there's -- the last sentence is what's commonly
8 referred to as an integration clause.

9 Do you see that last sentence of
10 paragraph 8?

11 A. Yes.

12 Q. And did you agree with the debtor
13 that the terms and provisions of the paragraph
14 control and supersede every other provision of
15 all other agreements between the payee and the
16 maker in conflict herewith?

17 A. I see it. I mean, I read it. But
18 what's -- what's the question?

19 Q. Withdrawn. It's okay. It speaks
20 for itself.

21 You were the CEO of Highland at the
22 time that you signed the note, correct?

23 A. Yes.

24 Q. And you controlled Highland at that
25 time; is that fair?

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2 A. Yes.

3 Q. And at the time that you signed the
4 note, the Redeemer Committee had not yet
5 obtained a judgment against Highland Capital
6 Management or anybody else; is that -- any
7 other Highland entity; is that right?

8 A. I -- and I don't recall the -- the
9 timing --

10 Q. Okay.

11 A. -- of their arbitration award or...

12 Q. Let me ask you to just go back in
13 time, February of 2018. Do you recall having
14 any concern in February 2018 that you might
15 lose control of Highland?

16 A. No, I don't recall.

17 Q. While you were the CEO, did
18 Highland -- withdrawn.

19 I'm going to refer to Highland
20 Capital Management, L.P., variously today as
21 either the debtor, Highland, or HCMLP; is that
22 fair?

23 MS. DEITSCH-PEREZ: John, I think
24 it's a little confusing if you do that. I
25 mean, if you could refer to the

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post-bankruptcy entity as "the debtor" and,
when you're talking about prebankruptcy,
call it "Highland" or "HCM"?

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: I -- I think
that would probably be clearer.

MR. MORRIS: That's fair. I'll try
and do just that. Thank you very much.

BY MR. MORRIS:

Q. While you were the CEO of HCMLP, did
HCMLP, prepare, in the ordinary course of
business, a document called a "Monthly
Reporting Package"?

A. I don't know -- I don't know the
name -- I don't know that name in particular,
but we did do monthly financials, I believe.

Q. Okay. And did you personally review
the monthly financials each month that they
were prepared?

A. No.

Q. Do you know who was responsible for
preparing the monthly financials?

A. It would have been in accounting. I
don't know who in accounting.

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Q. Was Frank Waterhouse responsible for preparing the Monthly Operating Reports?

A. He was our CFO. So everything, ultimately, in accounting reported up through him, but I don't know his involvement in that report.

Q. Can you identify any person who was responsible for preparing the Monthly Operating Reports for HCMLP, while you were the CEO?

A. No.

Q. Do you know what the Monthly Operating Reports were used for?

Withdrawn.

What was the purpose of preparing Monthly Operating Reports, if you know?

A. I don't know.

Q. Were they delivered to you each month, even if you didn't read them?

A. I don't believe so. Not physically, that I can remember. If there was an email, I don't remember.

Q. Did you ever discuss any of the Monthly Operating Reports with Mr. Waterhouse?

A. I can't -- I can't recall.

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MS. DEITSCH-PEREZ: I mean, do you mean the report specifically or Highland's financials generally?

MR. MORRIS: The Monthly Operating Reports that we're talking about.

And I would appreciate it, Deborah, if you have an objection, just say "Object to the form of the question"; and I'll do the best I can to -- to try to understand what you're saying, but I'd prefer no speaking objections.

BY MR. MORRIS:

Q. Do you recall ever speaking with anybody in accounting with respect to any Monthly Operating Report that they prepared?

A. I don't recall.

Q. Okay.

MR. MORRIS: Can we put up Exhibit Number 2, please?

(Exhibit 2 introduced.)

BY MR. MORRIS:

Q. Looking at the first page, sir, does this appear to be what we've been describing as a Monthly Operating Report for Highland Capital

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Management?

A. It says "Operating Results." I -- I have no recollection of seeing this cover sheet before.

Q. Okay.

MR. MORRIS: Can we go to the second page, please?

Stop right there.

BY MR. MORRIS:

Q. This is the second page of the Operating Results for February 2018, and it's headed "Significant Items Impacting HCMLP's Balance Sheet."

Do you see that?

A. Yes.

Q. Do you know whether the accounting department was charged with the responsibility of identifying on a monthly basis significant items that would impact Highland's balance sheet?

A. I have no particular awareness.

Q. Okay. Do you see at the bottom under the title "Other," it's \$3.8 million and it's referred to as "Partner Loan"?

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2 A. Yes.

3 Q. Do you have an understanding that
4 that 3.8 million-dollar partner loan refers to
5 what we just looked at as Exhibit 1, the
6 promissory note?

7 MS. DEITSCH-PEREZ: Object, no
8 foundation.

9 A. I have -- I have no particular
10 awareness other than the amounts are similar.
11 BY MR. MORRIS:

12 Q. And -- and do you know whether
13 Highland recorded the promissory note as an
14 asset on its balance sheet as of February 2018?

15 A. I -- I don't know.

16 Q. So, you signed a promissory note for
17 \$3.8 million in February 2018; and as the CEO,
18 you don't know if Highland carried that
19 promissory note on its balance sheet. Do I
20 have that right?

21 A. I'm saying I don't have particular
22 knowledge. I -- I am a CPA and GAAP accounting
23 would suggest that it was, but I don't have --
24 I don't have particular knowledge on how it was
25 accounted for.

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2 Q. Okay. Later in the year, you signed
3 two more promissory notes in favor of Highland;
4 is that right?

5 A. I -- I believe so. Yeah.

6 MR. MORRIS: Can you put up
7 Exhibit 3, please?

8 (Exhibit 3 introduced.)

9 BY MR. MORRIS:

10 Q. And can we go to the signature line?
11 (Scrolling.)

12 BY MR. MORRIS:

13 Q. Is that your signature, sir?

14 A. Yes.

15 MR. MORRIS: Go to the top of the
16 page.

17 BY MR. MORRIS:

18 Q. Did you sign a promissory note on or
19 about August 1st, 2018, in the amount of
20 \$2.5 million in favor of Highland?

21 A. Yes.

22 Q. Did you receive from Highland
23 Capital Management, L.P., \$2.5 million on or
24 about August 1st, 2018?

25 A. I believe so.

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2 Q. And did you, in fact, sign this
3 promissory note in exchange for that
4 \$2.5 million?

5 A. Yes.

6 MR. MORRIS: Can we go down to
7 paragraph 2, please?

8 (Scrolling.)

9 BY MR. MORRIS:

10 Q. Looking at paragraph 2, would you
11 characterize this as a demand note, using the
12 understanding that you described earlier today?

13 A. Yes.

14 Q. And -- and this note, like the
15 other, because they're demand notes, there's no
16 conditions for -- for the demand, is that
17 right, at least as drafted.

18 Withdrawn. That wasn't a great
19 question.

20 Were these unconditional demand
21 notes, these two documents that we've
22 looked at?

23 A. I -- I don't want to make a legal
24 interpretation.

25 Q. I'm just asking for your

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understanding as the person who signed the note. At the time you signed it, at that time, did you understand that there were any conditions placed on Highland's ability to make a demand?

A. I don't know.

Q. Okay. Did you understand that under these demand notes, that if you defaulted, all amounts that were due and payable would accelerate?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

BY MR. MORRIS:

Q. Did you read this -- did you read this promissory note before you signed it?

A. No.

Q. Do you know whose idea it was to give you the principal amount of these notes and for you to execute the promissory notes in exchange?

A. I -- again, I think it's proper accounting consistent with what we've done with -- we've done historically -- or Highland

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did historically and what Highland did historically for other employees.

Q. Okay. I'm not asking about that. I'm asking just about you and the two notes that we've looked at so far: Who made the decision at the respective moments in time to transfer to you the principal amount of the notes and for you to execute the notes?

A. I believe it would have come from accounting.

Q. Who decided -- who decided the principal amount of the note?

A. I don't know. It would -- I don't know.

Q. Did you ask to borrow money? Did you ask the folks in accounting for a loan from Highland in the principal amount of the notes and request that they document it accordingly?

A. No.

Q. Who was your assistant at this time?

A. My accounting assistant at this time was Melissa Schroth.

Q. And was she authorized to sign these

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notes on your behalf?

A. I -- that -- sometimes she signs stuff. I don't know on this. I'm -- I'm not denying that it's a bona fide -- signed by me. Or if it wasn't signed by me, it was -- somebody who was authorized signed it on my behalf.

Q. Okay. I appreciate that. Thank you.

Is there anything about -- withdrawn.

Was there anything about this promissory note that you didn't understand at the time that either you signed it or it was signed on your behalf?

MS. DEITSCH-PEREZ: Object, no foundation.

A. Again, I didn't evaluate it carefully, and I didn't actually even read it.

BY MR. MORRIS:

Q. Okay. As you sit here today, can you identify anything in this document that you do not understand?

MS. DEITSCH-PEREZ: Object, no

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2 foundation.

3 A. I -- I don't want to make a legal
4 interpretation on a legal document.

5 BY MR. MORRIS:

6 Q. I appreciate that, but I have no
7 ability to ask any follow-up questions. So let
8 me ask it just a different way: Is there
9 anything about this document that you don't
10 understand today?

11 MS. DEITSCH-PEREZ: Object, no
12 foundation.

13 BY MR. MORRIS:

14 Q. You can answer.

15 A. I don't know.

16 Q. Okay. Do you understand that if
17 there was something that -- that you did not
18 understand, you have an obligation to tell me
19 that right now?

20 MS. DEITSCH-PEREZ: Object, no
21 foundation.

22 A. I -- I -- the answer is the same. I
23 don't know.

24 MR. MORRIS: Can we go to Exhibit
25 Number 4, please?

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2 (Exhibit 4 introduced.)

3 MR. MORRIS: Can we go to the
4 signature line when you get there?

5 BY MR. MORRIS:

6 Q. Is that your signature, sir?

7 A. Yes.

8 Q. And did you sign this document or --
9 or -- let me ask two questions first. Did you
10 personally sign this document?

11 A. And again, it was either me or
12 someone with my approval, but that doesn't look
13 like my typical signature, but it's close.

14 Q. Okay. And whoever signed it had the
15 authority from you to sign on your behalf; is
16 that fair?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we go to the top of
20 the page, please?

21 BY MR. MORRIS:

22 Q. And did you or somebody acting on
23 your behalf sign this promissory note on
24 August 13, 2018, in the amount of \$2.5 million?

25 A. Yes.

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2 MR. MORRIS: Can we go to

3 paragraph 2, please?

4 BY MR. MORRIS:

5 Q. Looking at paragraph 2 and the term
6 contained therein, would you agree that this is
7 a demand note, using the definition that you
8 supplied earlier today?

9 A. Yes.

10 Q. At the time that this note was
11 signed on your behalf, did you intend to comply
12 with the terms of this note?

13 A. Yes.

14 Q. At the time that this note was
15 signed on your behalf, did you intend to pay
16 all unpaid principal and accrued, but unpaid,
17 interest upon demand of the payee?

18 A. Let me say I -- I expected to honor
19 the agreement. I don't know if I can answer
20 that with regard to that one term.

21 Q. Well, I do just want to make sure
22 that -- withdrawn.

23 You understood at the time you
24 signed this document, or it was signed on your
25 behalf, that it was a demand note, correct?

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2 A. That it was structured -- no. I
3 think what I've testified or tried to testify
4 to is that they are demand notes or they're
5 written as demand notes. I didn't read them or
6 pay attention at the time to the structure of
7 the note.

8 Q. Okay. And as demand notes, you
9 understood that any unpaid principal and
10 interest would be due upon demand, correct?

11 A. Again, I don't want to make -- I
12 don't want to make -- I don't want to affirm
13 that statement. I would say I don't know
14 because I don't want to -- I don't know the
15 rest of the context of the rest of the note and
16 how it all interplays.

17 Q. All right. Well, I'm happy to --
18 to -- it's a very short document, so we can
19 look at it for as long as you want, but I
20 really need to know what -- what you, as the
21 maker, understood when you signed the note. So
22 I'm going to ask a very simple question, and I
23 encourage you to -- to ask to see whatever
24 portions of the document you want, okay?

25 When these three notes were signed

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by you or signed by someone you authorized to sign, what did you understand the payment terms to be?

A. I -- I didn't. I didn't have an understanding at the time.

Q. So -- but -- but you would agree that your intention was to comply with the terms of the note; is that fair?

A. In aggregate, yes.

Q. Okay.

MR. MORRIS: Go to Exhibit 5, please.

(Exhibit 5 introduced.)

BY MR. MORRIS:

Q. Is it your practice to sign documents or to have people sign documents on your behalf that you haven't read?

A. Yes.

Q. This is a document that's entitled "Operating Results" for August 2018. Do you see that?

A. Yes.

MR. MORRIS: And if we could just go to the second page.

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2 BY MR. MORRIS:

3 Q. Do you see under Significant Items
4 Impacting Highland's bank -- balance sheet for
5 August 2018 at the bottom, there's a reference
6 to \$5 million in "partner loan." Do you see
7 that?

8 A. Yes.

9 Q. Do you have an understanding as to
10 whether or not that refers to the two
11 2.5 million-dollar notes that we just looked at
12 that were signed in August 2018?

13 A. I don't know.

14 Q. Do you have any recollection at
15 all or -- withdrawn.

16 Were you personally referred to as a
17 partner of Highland in August 2018?

18 A. I believe so.

19 Q. Are you aware of any partner loans
20 that were made by Highland in August 2018 other
21 than the two loans that we just looked at?

22 A. I don't know.

23 Q. You're not aware of any; is that
24 fair?

25 MS. DEITSCH-PEREZ: Object, no

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2 foundation.

3 A. I don't know.

4 BY MR. MORRIS:

5 Q. There came a time when the debtor
6 made demand on these three notes, right?

7 A. I don't know. I believe -- I don't
8 know specifically, but I believe so.

9 MR. MORRIS: Can we put up
10 Exhibit 6, please?

11 (Exhibit 6 introduced.)

12 BY MR. MORRIS:

13 Q. Do you see this is a -- it's a
14 letter dated December 3rd, and it's addressed
15 to you.

16 And if we scroll down a little bit,
17 it's signed by Mr. Seery as the CEO and CRO of
18 Highland Capital Management.

19 Do you see that?

20 A. Yes.

21 Q. Do you recall on or around
22 December 3rd, 2020, the debtor made a demand
23 for all outstanding principal and interest due
24 under the three notes that we just looked at?

25 A. I -- I see the letter. I don't have

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2 a recollection.

3 Q. All right. Do you understand that
4 in December 2020, the debtor made a demand for
5 payment of all unpaid principal and interest
6 under the three notes that we just looked at,
7 even if you don't remember this particular
8 letter?

9 A. I'm sorry. What was -- yeah, I
10 accept the letter, and I'll accept that it was
11 delivered.

12 What -- what's your question,
13 please?

14 Q. I'm trying to just get -- get your
15 understanding.

16 And I think you testified that you
17 don't recall seeing this letter. Do I have
18 that right?

19 A. That's correct.

20 Q. Okay. So, putting the letter to the
21 side, did you become aware in December 2020
22 that the debtor had demanded that you pay all
23 unpaid principal and interest due under the
24 three promissory notes that we just looked at?

25 A. Again, just generally.

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2 Q. Did you make any payment to the
3 debtor in response to that demand?

4 A. No.

5 Q. Did you or anybody acting on your
6 behalf respond to the debtor's demand in any
7 way?

8 MS. DEITSCH-PEREZ: Object to the
9 form.

10 BY MR. MORRIS:

11 Q. Withdrawn. That's fair.

12 Let me ask a different question.

13 Did you or anybody acting on your
14 behalf respond to the debtor's demand at any
15 time prior to the commencement of this
16 adversary proceeding?

17 MS. DEITSCH-PEREZ: Object to the
18 form.

19 A. Can you repeat it one more time?

20 BY MR. MORRIS:

21 Q. Sure. Did you or anybody acting on
22 your behalf respond to the debtor's demand for
23 payment of all unpaid principal and interest at
24 any time prior to the commencement of this
25 lawsuit?

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2 MS. DEITSCH-PEREZ: Object to the
3 form.

4 A. I want -- I want to answer that
5 question as -- as follows: I'm not saying on
6 my behalf, but I know there was a lot of
7 conversations with lawyers and business people
8 around the notes and their shared services and
9 the split and the overpayments to Highland and
10 -- trying to reach some amicable resolution of
11 shared services -- in fact, the entire
12 estate -- but I don't -- I don't -- I don't
13 recall specifically or -- what lawyers or what
14 business people were saying what to the debtor,
15 but I -- I know there were a lot of
16 conversations that were going on.

17 BY MR. MORRIS:

18 Q. Can you identify any aspect of any
19 of the conversations you just described that
20 pertained to the debtor's demand for payment of
21 all unpaid principal and interest on the three
22 notes?

23 A. Not -- not specifically.

24 Q. Okay. There came a time when an
25 answer to the debtor's complaint was filed on

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2 your behalf.

3 Do you remember that?

4 A. No, but I'm willing to be refreshed.

5 Q. Okay.

6 MR. MORRIS: Can we please put up
7 Exhibit 7?

8 (Exhibit 7 introduced.)

9 MR. MORRIS: And if we could just
10 scroll down to the title.

11 BY MR. MORRIS:

12 Q. Do you see that this document is
13 called "Defendant James Dondero's Original
14 Answer"?

15 A. Yes.

16 Q. And if we scroll back to the top of
17 the document, do you see that it was filed on
18 the docket on March 16, 2021?

19 A. Yes.

20 Q. Did you personally read this
21 document before it was filed?

22 A. No.

23 Q. Did you have an understanding as to
24 the contents of the document before it was
25 filed?

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2 A. No.

3 Q. Did you authorize Bonds Ellis to
4 file this document on your behalf?

5 A. Not specifically that I remember.

6 Q. Did you know on or around March 16,
7 2021, that Bonds Ellis had filed "Defendant
8 James Dondero's Original Answer" in this
9 adversary proceeding?

10 A. Not specifically. There's a lot
11 going on.

12 Q. As you sit here right now--and,
13 again, happy to page through the document--can
14 you tell me whether you have ever read
15 Defendant James Dondero's Original Answer?

16 A. Not that I recall.

17 Q. So, as of -- and that's true as of
18 today; is that fair?

19 A. Can we scroll through this, please?

20 Q. Yes. Just let us know if you want
21 us to slow down or speed up.

22 MS. DEITSCH-PEREZ: Yeah, just go
23 slow enough so he could sort of eyeball
24 each page.

25 MR. MORRIS: You bet.

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2 THE WITNESS: Yep, keep going.

3 (Scrolling.)

4 THE WITNESS: Hold on. Could you go
5 back a little bit, please? It just goes --
6 stop right there.

7 A. I do remember paragraph 5. I think
8 that was recently tried last week or so, but I
9 think that was always the -- always the way it
10 was described to me by lawyers, was that these
11 notes shouldn't be in her Court.

12 MS. DEITSCH-PEREZ: Okay. And I'll
13 just -- I'll just caution the witness to
14 not disclose communications with counsel,
15 but it's okay if something catches your eye
16 and you, at least, remember that part, say,
17 "Oh, yeah, I remember that one," but
18 without going into details as to any
19 communications with your lawyers.

20 MR. MORRIS: And -- and that's fine.
21 That's fine. I'm certainly not looking for
22 that.

23 BY MR. MORRIS:

24 Q. The question is really simple: Have
25 you ever seen this document before and --

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2 MS. DEITSCH-PEREZ: John, I think he
3 said he needs to scroll through it to see
4 if anything --

5 MR. MORRIS: I understand.

6 MS. DEITSCH-PEREZ: -- triggers a
7 recollection. He just said he's looking at
8 5, yeah, that looks familiar. If you want
9 to keep going, we could find out if there
10 are any others that -- that look familiar
11 to him.

12 THE WITNESS: Let's keep going.

13 (Scrolling.)

14 MS. DEITSCH-PEREZ: You'll agree
15 that most answers are not particularly
16 memorable when they say things like --

17 (Simultaneous conversation.)

18 MR. MORRIS: Please stop. Please
19 stop. Please stop talking. Please stop
20 talking. It's inappropriate.

21 MS. DEITSCH-PEREZ: I -- I know.
22 It's your deposition, and you could do all
23 this stuff, but --

24 (Simultaneous conversation.)

25 MR. MORRIS: Please stop talking.

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2 Please stop talking.

3 MS. DEITSCH-PEREZ: I hear you.

4 THE WITNESS: Keep -- keep going.

5 (Scrolling.)

6 THE WITNESS: Okay. Keep going.

7 (Scrolling.)

8 THE WITNESS: It looks to me like --

9 MS. DEITSCH-PEREZ: Keep -- let --

10 let him go through the whole thing.

11 THE WITNESS: Sure. Keep going.

12 (Scrolling.)

13 THE WITNESS: Okay. Is that it?

14 MR. MORRIS: Yes.

15 THE WITNESS: Okay.

16 BY MR. MORRIS:

17 Q. Do you recall ever seeing this
18 document before, sir?

19 A. The -- the substance of it, again,
20 some of it I -- I remember, and the -- there --
21 it strikes me as a legal argument and defenses
22 regarding the payment of the notes, and I do
23 remember a lot of conversation regarding it
24 being -- it should be outside -- it should be
25 in a different court, and it should be a jury

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trial. And those are two main points in here, but it seems like there are a bunch of other defenses listed.

Q. Okay.

A. And I have -- and I have an awareness of it, but I'm not a lawyer.

Q. I appreciate that you're not a lawyer; but looking at the document, does that refresh your recollection that you read and reviewed this document before it was filed on your behalf?

A. I have -- I have an awareness of it, but I wouldn't -- I wouldn't have been deeply involved in its drafting or detailed approval.

MR. MORRIS: Can we go to page 6 of 8, please?

BY MR. MORRIS:

Q. And directing your attention to paragraph 40, do you see it says, as the first affirmative defense, quote, "Defendant asserts that plaintiff's claims should be barred because it was previously agreed by plaintiff that plaintiff would not collect on the notes."

Do you see that?

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2 A. Yes.

3 Q. Okay. Have I read that accurately?

4 A. Yes.

5 Q. Did the plaintiff ever agree that
6 plaintiff would not collect on the notes?

7 A. Yes.

8 Q. You subsequently amended this
9 defense; isn't that right?

10 A. I believe so.

11 Q. And do you understand that you
12 amended it to add a few words relating to
13 conditions subsequent?

14 A. I -- I -- other than for
15 clarification and completeness, the -- it was
16 amended. I don't have specific knowledge of
17 what was amended.

18 Q. Okay. When did the plaintiff agree
19 that the plaintiff would not collect on the
20 notes?

21 A. Boy, that was early on in the case.
22 Every proposal, every POT plan, every
23 settlement discussion never included value for
24 notes.

25 Q. All right. I'm going to ask the

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question again: When did the plaintiff agree that it would not collect on the notes?

MS. DEITSCH-PEREZ: Are you talking about the subsequent agreements in the next pleading?

MR. MORRIS: I'm asking for an answer as to when the agreement referred to in paragraph 40 was entered into.

A. First quarter of -- first quarter of 2020.

BY MR. MORRIS:

Q. So it was after the petition date?

MS. DEITSCH-PEREZ: Are you asking about the 2018 notes?

MR. MORRIS: Yes, those are defined to be "the notes."

BY MR. MORRIS:

Q. So -- so did -- this is your defense.

Is it your position, Mr. Dondero, that in the first quarter of 2020, the plaintiff agreed that it would not collect on the notes?

A. I -- I -- I don't -- I want to leave

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my testimony as what I just said a minute ago.

The notes were never part of any POT plan or suggested POT plan or suggested grand bargain or suggested as having any value starting in the first quarter of '20 -- or most of the year, I believe, until the -- towards the end of the year.

Q. All right. Was there ever an agreement between you and the plaintiff that the plaintiff would not collect on the notes if there was no grand bargain or no POT plan?

A. Yeah, the -- I'm sorry. Repeat again.

Q. Who entered the agreement on behalf of the debtor that the plaintiff would not collect on the notes?

A. (Indiscernible speech.)

Agreement on -- you know, the -- the -- you know the -- I think I'm looking at this question from a perspective of the negotiation, you know, at that time and not including the subsequent conditions that were overlaid on the notes, I guess. So I guess it's a combination of both.

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Q. I'm asking you to identify the person who acted on behalf of the debtor in reaching the agreement with you that the plaintiff would not collect on the notes. Who did that?

MS. DEITSCH-PEREZ: John, I think the problem is you're referring to the debtor, so he's looking at post-bankruptcy. You might ask it two questions, one --

MR. MORRIS: No. Please stop. Please stop. Please stop.

(Simultaneous conversation.)

MS. DEITSCH-PEREZ: You agreed to that condition. You agreed to distinguish between the debtor --

(Simultaneous conversation.)

MR. MORRIS: Deborah --

MS. DEITSCH-PEREZ. -- bankruptcy --

MR. MORRIS: Deborah --

(Simultaneous conversation.)

THE REPORTER: I can't -- I can't write two people at the same time.

MR. MORRIS: This is so improper. He has --

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2 MS. DEITSCH-PEREZ: It is not. You
3 agreed --

4 MR. MORRIS: Please let me finish.
5 Please let me finish.

6 He has described the conversations
7 as taking place in 2020. I should be
8 referring to the debtor. He is
9 describing --

10 MS. DEITSCH-PEREZ: Right.

11 MR. MORRIS: -- the context --

12 MS. DEITSCH-PEREZ: But if you want
13 to know about something that happened
14 before bankruptcy, ask about Highland.

15 MR. MORRIS: But I'm not. I
16 don't -- please stop interrupting.

17 MS. DEITSCH-PEREZ: It's your
18 deposition. If you want a muddy record, be
19 my guest.

20 MR. MORRIS: I would really
21 appreciate it. I think I know what I'm
22 doing.

23 BY MR. MORRIS:

24 Q. Mr. Dondero, who, on behalf of the
25 debtor, during these conversations about a

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grand bargain and a POT plan told you or entered into the agreement that the plaintiff would not collect on the notes?

A. I -- I -- during the bankruptcy, we're talking about, right?

Q. I'm just following up on your statement that the conversation -- that the agreement was entered into in the first quarter of 2020.

Do I have that right, or is that wrong?

A. Well --

Q. Let's start again. Let's start again.

This affirmative defense refers to an agreement. Do you see that?

A. Yes.

Q. This is your affirmative defense; isn't that correct?

A. Yes.

Q. And according to this affirmative defense, the agreement was that the plaintiff would not collect on the notes. Do I have that right?

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2 A. Yes.

3 Q. Let's start with: When was that
4 agreement entered into?

5 A. Okay. I'm going to have to parse,
6 and I'm going to have to answer your question
7 as accurately as I can.

8 The subsequent conditions for
9 forgiveness of the notes were established
10 during a comp period in early 2019 for these
11 notes that were drafted in '18.

12 And the agreement was reached
13 with -- I believe it's a majority of, whatever,
14 the Class A holders in the fourth amended
15 Highland Capital partnership -- partnership
16 agreement. And that's what set up the
17 subsequent conditions and the ability for the
18 loans to be forgiven.

19 When you get into bankruptcy,
20 whether it was Seery, the independent board, or
21 whoever, no one ever put any value nor was it
22 ever included in any -- were the notes included
23 in any settlement discussions, period.

24 Q. All right. So, it's your testimony
25 that the debtor in settlement negotiations

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2 never, ever, ever asked for or demanded the
3 repayment of any unpaid principal or interest
4 under these three notes?

5 That's your sworn testimony?

6 A. No.

7 Q. So how did I get that wrong, then?

8 A. Well, a few minutes ago we went over
9 a letter from the debtor making a demand, but
10 that was, I believe, this year or -- yeah, I
11 believe that was this year or the end of '20.

12 What I'm saying is through '20, the
13 full year of '20 when we were trying to work on
14 a POT plan or global settlement before Seery
15 betrayed the estate, we were -- we never --
16 there was never value assigned to the notes.

17 Q. And you never offered to make any
18 payment of any kind, principal or interest, on
19 any of the notes in connection with any
20 proposal you ever made as part of the grand
21 bargain or POT plan; is that right?

22 A. I think -- I believe on the -- not
23 through 2020. I'll say that.

24 By the time 2021 came along, on the
25 eve of trial when I sent over a capitulation

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offer -- I think it was even titled that -- I think I threw more money than everybody deserved or was entitled to, to try and resolve it. And implicitly, there was -- because it was more than everybody was entitled to, I think implicitly it included value for the notes.

Q. And is it your testimony that at no time prior to the delivery of the demand letter did the debtor ever make an offer to you or -- of any kind that included any repayment of any principal or interest due under the three notes?

A. I'm willing to be refreshed, but not that I recall.

Q. Okay. And is it your testimony that anybody acting on behalf of the debtor ever agreed not to collect on the notes?

A. I'm sorry. Repeat that one more time, just --

Q. Is it your testimony -- withdrawn. Did anybody acting on behalf of the debtor ever agree with you that it would not collect on the notes, irrespective of whether

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2 there was a settlement?

3 MS. DEITSCH-PEREZ: Object to form.

4 A. Yeah. Again, that was my
5 understanding through 2020.

6 BY MR. MORRIS:

7 Q. Do you have --

8 THE WITNESS: Let's -- let's --
9 before the next question, let's take a
10 ten-minute break, ten-minute bathroom
11 break, please.

12 MR. MORRIS: No problem.

13 MS. DEITSCH-PEREZ: Okay. We've
14 been going an hour, so we'll come back
15 at -- 10:30, come back at 10:40?

16 MR. MORRIS: That's fine. Thank
17 you.

18 (Recess held.)

19 BY MR. MORRIS:

20 Q. Is the agreement that you're
21 referring to and that's referred to in
22 paragraph 40, is that reflected in any document
23 that you're aware of?

24 A. Not that I'm aware of.

25 Q. And I believe you mentioned -- and

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2 we'll talk about this more later, but the part
3 about the subsequent conditions or the
4 conditions subsequent, that was the agreement
5 that was entered into, did you say the -- in
6 part -- as part of a compensation committee
7 meeting?

8 A. As part of our compensation process
9 in -- early in 2019.

10 Q. Okay. And when you say "early
11 2019," can you -- do you recall what month?

12 A. In January/February.

13 Q. So, it's your testimony that in
14 January or February 2019, you and the debtor
15 reached the agreement that's referred to in
16 paragraph 40 as subsequently amended by your
17 amended answer; is that right?

18 MS. DEITSCH-PEREZ: Object to the
19 form.

20 John, I thought you were going to
21 agree to call Highland Highland --

22 MR. MORRIS: That's fine. That's
23 fine.

24 (Simultaneous conversation.)

25 MS. DEITSCH-PEREZ: -- thereafter.

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MR. MORRIS: That's fine. So, let me rephrase the question.

BY MR. MORRIS:

Q. I just want to make sure that I have this right, Mr. Dondero. It's your recollection that in January or February of 2019, you reached an agreement with Highland that's reflected in paragraph 40 as subsequently amended to include the phrase "conditions subsequent." Do I have that right?

A. I gave my testimony. I don't know if -- I don't want to opine on the legal document and whether the legal document captures it there or somewhere else, but my -- my recollection regarding pre-bankruptcy and post-bankruptcy is as I -- as I stated already.

Q. Let me -- let me try this a different way.

We looked at the three promissory notes. Were those promissory notes ever amended, to the best of your knowledge?

A. No, not that -- I mean, not -- not in writing.

Q. Okay.

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2 A. They were amended -- they were
3 amended -- they were amended verbally.

4 Q. Okay. And did that verbal agreement
5 take place in January or February 2019?

6 A. Yes.

7 Q. Was there any verbal agreement
8 related to the notes that occurred other than
9 the one you're referring to in January or
10 February 2019?

11 A. Well, I gave my testimony during
12 bankruptcy in 2020, the substance of all
13 negotiations never assigned value to the -- the
14 notes.

15 Q. But you never reached an agreement
16 with the debtor on -- on any settlement that
17 would include either payment for or forgiveness
18 of the notes; is that fair?

19 You never reached an agreement?

20 A. Not in writing, but I believe we
21 were operating with an understanding that
22 the -- weren't likely to have value to the
23 estate.

24 MR. MORRIS: Okay. I move to
25 strike, and I'll ask the question again.

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2 BY MR. MORRIS:

3 Q. Do you have any agreement with the
4 debtor -- agreement with the debtor with
5 respect to any of the three notes?

6 MS. DEITSCH-PEREZ: Object to the
7 form.

8 A. I believe the debtor in bankruptcy
9 inherits that subsequent condition agreements
10 from the first quarter of 2019; and I believe
11 in 2020, the debtor operated and participated
12 and acted in a way all negotiations that
13 suggested the notes had -- were unlikely to
14 have any value to the estate.

15 MR. MORRIS: Okay. I move to
16 strike.

17 BY MR. MORRIS:

18 Q. And I'd ask you to please listen
19 carefully to my question and only answer the
20 question that's asked.

21 Is there any agreement that pertains
22 to the notes other than --

23 MS. DEITSCH-PEREZ: Objection,
24 asked --

25 BY MR. MORRIS:

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2 Q. -- with --

3 A. Yeah, I'm going to stick with my
4 same answer that I've given twice.

5 Q. I'm actually -- I'm actually asking
6 a different question; and if you would let me
7 finish, this would go a lot more smoothly.

8 Is there any agreement, written or
9 verbal, between you and the debtor concerning
10 the notes other than the verbal agreement that
11 you contend was entered into in January and
12 February 2019?

13 I don't want to know about
14 operations or offers or settlement discussions.
15 I want to know about agreements: Is there any
16 agreement pertaining to the notes other than
17 the verbal agreement entered into in January or
18 February 2019?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. Yes.

22 BY MR. MORRIS:

23 Q. What other agreement exists?

24 A. The agreement between, I guess, me
25 and to the extent other related parties that

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2 had notes with the debtor, beginning in the
3 first quarter after the bankruptcy, that the
4 notes were unlikely to have any value to the
5 estate or have any value in settlement.

6 Q. Okay. I don't want to know about
7 value. I want to know if there is an agreement
8 not to collect.

9 So let me try and answer -- ask the
10 question differently.

11 Other than the agreement that you
12 assert was entered into in January or
13 February 2019, did anybody acting on behalf of
14 Highland or the debtor enter into any other
15 agreement pursuant to which the debtor agreed
16 not to collect on the notes?

17 A. I'm -- I'm going -- same answer:
18 Implicitly, yes.

19 Q. Okay. Is that -- is that implicit
20 agreement written down anywhere?

21 You know what? I'm going to move
22 on, Mr. Dondero, and I look forward to the jury
23 trial.

24 MR. MORRIS: Can we put up the next
25 exhibit, Number 8?

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2 (Exhibit 8 introduced.)

3 BY MR. MORRIS:

4 Q. Did you --

5 MR. MORRIS: If we could scroll down
6 a little bit.

7 BY MR. MORRIS:

8 Q. Are you aware that the debtor served
9 discovery in connection with this action?

10 A. Not specifically.

11 Q. Do you see that these are your
12 objections and responses to the debtor's
13 requests for admission?

14 A. Yes.

15 Q. Have you ever seen this document
16 before?

17 And we can scroll down, if you'd
18 like.

19 MS. DEITSCH-PEREZ: Scroll through
20 it, please.

21 THE WITNESS: Yeah, let's scroll
22 through it.

23 (Scrolling.)

24 THE WITNESS: Can you keep going,
25 please?

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2 MR. MORRIS: That's the end.

3 THE WITNESS: Okay.

4 BY MR. MORRIS:

5 Q. Have you ever seen this document
6 before, sir?

7 A. I'm aware of it -- I mean, yes, but
8 I don't remember -- ask whatever questions you
9 want about it, and we'll go from there.

10 Q. Did you see this document before --
11 before it was sent to my firm on April 28th,
12 2021?

13 A. I mean, I'm sure I did and -- or I'm
14 sure I did if I was supposed to approve it, but
15 I don't specifically remember.

16 Q. And did you, in fact, authorize your
17 attorneys to serve this particular document?

18 A. I -- I believe so.

19 MR. MORRIS: Can we just go to the
20 very last request for admission, number 14?

21 (Scrolling.)

22 BY MR. MORRIS:

23 Q. You'll see that Request For
24 Admission Number 14 asks you to admit that as
25 of January 22nd, 2021, you hadn't paid the

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2 debtor the outstanding amount.

3 Do you see that?

4 A. Yes.

5 Q. And the definition of an
6 "outstanding amount" is the number that's just
7 above that.

8 And in response, you admitted only
9 that you hadn't paid the debtor the amount the
10 debtor asserts is due on the notes in the
11 amount of approximately \$9 million. Do you see
12 that?

13 A. Yes.

14 Q. Okay. I just want to ask a slightly
15 different question: Have you paid any amounts
16 to the debtor on account of the notes since
17 December 1st, 2020?

18 A. I -- I don't -- I don't know for
19 sure, but I don't believe so.

20 Q. Okay.

21 MR. MORRIS: Can we go to the next
22 exhibit, please, Number 9?

23 (Exhibit 9 introduced.)

24 MR. MORRIS: Okay. And if we can
25 scroll down just a little bit.

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2 BY MR. MORRIS:

3 Q. You'll see that these are the
4 "Objections and Answers" that were tendered on
5 your behalf in response to the debtor's first
6 set of interrogatories.

7 Do you see that?

8 A. Yes.

9 MR. MORRIS: And if we can go to the
10 last page.

11 MS. DEITSCH-PEREZ: Could you also
12 scroll through it so he could --

13 MR. MORRIS: Well, I'm happy to do
14 it. I'd like to do it my way, please.

15 Thank you.

16 Can we go to the last page, please?

17 (Scrolling.)

18 BY MR. MORRIS:

19 Q. Is that your signature there, sir?

20 A. Yes.

21 Q. And did you sign this document in
22 front of a notary public?

23 A. Yes.

24 Q. And did you certify that you had
25 read the document and the objections to the

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2 interrogatories?

3 A. Yes.

4 Q. And did you swear that the answers
5 were true and correct?

6 A. Yes.

7 Q. Okay.

8 MR. MORRIS: Now let's go back to
9 the top of the document.

10 BY MR. MORRIS:

11 Q. Did you, in fact, read this document
12 before you signed the Verification in front of
13 a notary?

14 A. Yes.

15 Q. Okay.

16 MR. MORRIS: Go to page 4 of 6,
17 please.

18 BY MR. MORRIS:

19 Q. Just to help you out, do you see
20 there's a reference to "Purported Agreement" in
21 the first interrogatory, 1(a)?

22 A. Uh-huh.

23 Q. That's a "yes," sir; is that right?

24 A. Yes.

25 Q. Okay. The Purported Agreement

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2 refers back to the agreement that we were
3 looking at in paragraph 40 of the answer -- and
4 I can just read it again -- that says -- the
5 agreement says, quote, "Plaintiff would not
6 collect on the Notes."

7 And I asked you three questions in
8 the interrogatory. Did this interrogatory
9 accurately state, to the best of your
10 knowledge, that you, personally, entered into
11 the Purported Agreement on behalf of the
12 debtor?

13 A. Which -- which one are you -- which
14 agreement are you talking about?

15 Q. Just the one that we were talking
16 about earlier -- and I'll just read it again
17 for you. We can call it back on the screen, if
18 it's helpful -- but the agreement that you
19 referred to in your answer that, quote,
20 "plaintiff would not collect on the notes."
21 That's the Purported Agreement.

22 And so, I just want you to confirm
23 that in your answer to Interrogatory No. 1, you
24 stated that it was true and accurate that you
25 entered into that agreement on behalf of the

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2 debtor.

3 Do I have that right?

4 A. I'm -- I'm going to say no because I
5 think you're using the wrong description of the
6 debtor versus Highland prebankruptcy.

7 Q. I appreciate that. I apologize.
8 Let me rephrase the question. That's a fair
9 point.

10 Did you enter into the agreement
11 referred to in your answer on behalf of
12 Highland?

13 A. The -- the agreement on behalf of
14 Highland prebankruptcy was agreed to by
15 majority of the Class A members, which I
16 believe at the time was Dugaboy.

17 Q. All right. That doesn't say that in
18 your answer here, does it?

19 A. Again, there was an original, I
20 think, answers; and then there were amended
21 answers. I think the lawyers did the best they
22 could to capture -- but, evidently, the parsing
23 between pre-bankruptcy agreements and
24 post-bankruptcy agreements was done the best it
25 could be by the lawyers but I -- I -- I don't

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2 want to comment on the legal.

3 Q. I don't want to comment on legal
4 stuff, either; but you signed this document,
5 you verified this document, and you verified
6 that it was true and accurate. Correct?

7 A. Yes.

8 Q. Okay. And in the first sentence to
9 your answer in Interrogatory 1, you wrote, or
10 somebody wrote on your behalf, quote: "The
11 agreements were entered into on behalf of the
12 debtor by James Dondero, subsequent to the time
13 each note was executed."

14 Is that an accurate statement, or is
15 it an inaccurate statement?

16 A. Again, it was between me and the
17 Class A, the majority of the Class A members.
18 It was a Class A -- the Class A members were
19 representing Highland, never the debtor,
20 because the debtor didn't exist yet.

21 But then, again, I don't know if
22 this paragraph refers to, again, how we
23 operated in bankruptcy, which was the
24 assumption that the notes had -- were likely --
25 were not likely to have any value for the

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2 estate. I don't -- I don't know which this is
3 referring to.

4 Q. You understand that the definition
5 of the "debtor" includes Highland Capital
6 Management, L.P.?

7 A. I think we started off the depo by
8 saying that there was a Highland prior to
9 bankruptcy and then there was a Highland in
10 bankruptcy and the debtor is Highland in
11 bankruptcy.

12 Q. Let me just ask you this question,
13 sir: Is that first sentence accurate, or is it
14 wrong?

15 I didn't write it, so -- and you
16 swore to it. You're the one who said it was
17 true and accurate. So now I'm asking you: Is
18 it actually true and accurate?

19 A. I'm going to stick with my testimony
20 so far. I don't want to opine on that. I
21 think it depends -- it's not -- maybe it's not
22 perfectly written, but...

23 Q. Sir, with all due respect, please
24 answer my question: Is the first sentence true
25 and correct, as you verified?

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2 MS. DEITSCH-PEREZ: He already
3 answered your question, John.

4 MR. MORRIS: That's fine. You can
5 have the objection, asked and answered.

6 I'm asking him to answer again.

7 BY MR. MORRIS:

8 Q. Is that first sentence true and
9 correct as you verified it?

10 A. "Behalf" probably isn't, like I
11 said, the right word. It should be "between"
12 the debtor and James Dondero. So that's how I
13 would wordsmith that.

14 Q. Okay. So this -- this first
15 sentence is not true and correct, to the best
16 of your knowledge; is that fair?

17 A. I -- I don't want to say that other
18 than I think it could be stated better.

19 Q. Okay. But as stated right now, it
20 says that the agreement was entered into on
21 behalf of the debtor by James Dondero. Have I
22 read that correctly?

23 A. Yeah. I mean, that is what it says.
24 Again, I feel like I'm interpreting legal
25 phraseology here, like "on behalf of the

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2 debtor." If it was an agreement between the
3 debtor and the Class A entered into --

4 MS. DEITSCH-PEREZ: Mr. Morris knows
5 very well there's another -- that there's
6 an amendment to this. I don't know why
7 he's doing this.

8 Mr. Morris --

9 (Simultaneous conversation.)

10 MR. MORRIS: Please stop. Please
11 stop.

12 I'm allowed to go through his sworn
13 statements. Give me a break. Please stop.
14 Don't coach --

15 MS. DEITSCH-PEREZ: You've been
16 asking the same question over and over and
17 over.

18 MR. MORRIS: You know, I'm going to
19 shut this down if you do it one more time.
20 I will, and I'm happy to make the motion to
21 the Judge. I'm begging you, please stop
22 interfering.

23 My apologies, Mr. Dondero. Never
24 directed at you personally.

25 BY MR. MORRIS:

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Q. The second sentence of the answer, have you been able to identify any documents that reflect or memorialize the agreements?

A. I mean, I -- I -- I don't -- I don't know, but I don't think so.

Q. Thank you very much.

MR. MORRIS: Go to the next document, please.

(Exhibit 10 introduced.)

BY MR. MORRIS:

Q. Do you see that this is the "Amended Answer" that was filed on your behalf?

MS. DEITSCH-PEREZ: Let's please --

THE WITNESS: Yes.

MS. DEITSCH-PEREZ: -- scroll through.

THE WITNESS: Yeah, please scroll through.

(Scrolling.)

BY MR. MORRIS:

Q. All right. Have you seen this document before, sir?

A. Yes, generally.

Q. Did you -- do you recall if you saw

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it prior to the time it was served and filed on
your behalf?

A. Probably.

Q. Did you authorize it to be filed on
your behalf?

A. Yes.

MR. MORRIS: Can we please go to
page 6 of 8?

(Scrolling.)

MR. MORRIS: And if we can scroll
just down to the "Affirmative Defenses."

BY MR. MORRIS:

Q. All right. Do you see
paragraph 40 --

A. Yeah.

Q. -- as compared to the prior version
of your answer, has added the words, quote,
"upon fulfillment of conditions subsequent."
Do you see that?

A. Yes.

Q. Why were those words added?

MS. DEITSCH-PEREZ: Object to the
form.

A. I think to make this document more

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complete and more clarified as things were
learned and investigated.

BY MR. MORRIS:

Q. And were things "learned and
investigated" after the time that you submitted
the -- withdrawn.

Were things "learned and
investigated" after the time the original
answer was served and filed on your behalf?

MS. DEITSCH-PEREZ: Object to the
form.

And I would also just caution the
witness before he speaks to think -- to
make sure he doesn't disclose
attorney-client communications.

A. I'm sorry, could you please repeat
the question?

BY MR. MORRIS:

Q. Sure. Did you, personally, learn or
discover anything related to this amended
paragraph 40 after the time that the original
answer was filed on your behalf?

MS. DEITSCH-PEREZ: Same objection.

A. We went through the -- the --

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MS. DEITSCH-PEREZ: When you say "we," are you talking about you and lawyers?

THE WITNESS: Yes.

MS. DEITSCH-PEREZ: Don't disclose your communications with lawyers.

BY MR. MORRIS:

Q. All right. I don't want to know anything about your communications with lawyers, but I'm going to ask you for facts.

What facts, if any, did you learn after the original answer was filed that relate to the words, quote, "upon fulfillment of conditions subsequent."

A. The "conditions subsequent" involved in the first quarter of 2019 were always an event, but it wasn't captured properly or needed to be clarified in the amendment.

Q. Well, you mentioned that "things were learned and investigated" after the answer was filed, and I'm just trying to pin down what that was?

A. I -- I took it more seriously with the lawyers as it -- as the notes became more

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2 of an issue, and it's -- I'm very busy over
3 here and then spent more time going through the
4 details, and this needed to be clarified or
5 stated differently.

6 Q. Okay. With respect to the agreement
7 referred to in paragraph 40, whose idea was it
8 to enter into that agreement?

9 A. It was -- it was mine.

10 Q. Okay. And who were -- who were the
11 majority of Class A holders that you referred
12 to earlier?

13 A. That was the counterparty
14 decision-maker for Highland prior to
15 bankruptcy, and like I said, I believe it was
16 Dugaboy.

17 Q. Can you think of any other member of
18 Class A who entered into this agreement on
19 behalf of the debtor in the early part of 2019
20 other than Dugaboy?

21 MS. DEITSCH-PEREZ: Object to the
22 form.

23 A. I do believe it was necessary.
24 Dugaboy alone was the requisite majority. I
25 didn't -- I don't remember or remember even

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thinking about including anybody else.

BY MR. MORRIS:

Q. Okay. And to be clear, Mr. Dondero, I'm not -- I don't have a view one way or the other as to whether you should or shouldn't -- who you should have contacted.

I just want to know who -- if you can identify for me the Class A members who acted to approve the agreement that's referred to in paragraph 40.

Is there anybody other than Dugaboy?

A. Not -- not -- not -- not specifically regarding that comp cycle.

Q. Okay. And who acted on behalf of Dugaboy to enter into the agreement that's referred to in paragraph 40?

A. The trustee.

Q. The trustee of Dugaboy?

A. Yes.

Q. And who was the trustee of Dugaboy in the January/February 2019 time period that entered into this agreement on behalf of the debtor?

A. My sister Nancy.

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2 Q. Did you and Nancy discuss this
3 agreement at all?

4 A. This agreement? No.

5 Q. Can you describe --

6 MS. DEITSCH-PEREZ: What do you mean
7 by "this agreement"?

8 (Simultaneous conversation.)

9 A. Not the one that's on the screen.

10 BY MR. MORRIS:

11 Q. Yes. That's the only one that I'm
12 talking about, so --

13 MS. DEITSCH-PEREZ: So you mean --

14 MR. MORRIS: Please, please, Deb --

15 MS. DEITSCH-PEREZ: John, can you
16 please clarify: Are you asking if he
17 discussed the answer with Nancy or the --

18 MR. MORRIS: I didn't use the word
19 "answer." I used the word "agreement," so
20 let me --

21 MS. DEITSCH-PEREZ: I know, but he
22 pointed to the screen.

23 (Simultaneous conversation.)

24 MR. MORRIS: Are you done?

25 MS. DEITSCH-PEREZ: Yes.

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2 BY MR. MORRIS:

3 Q. Mr. Dondero, can you describe for
4 me -- withdrawn.

5 Did you discuss with your sister
6 Nancy, the agreement that's referred to in
7 paragraph 40?

8 A. The agreement to subsequent
9 conditions, yes, absolutely. But this
10 agreement that's on the screen, I've never --
11 I've never -- I've never shown her this
12 document or talked to her about it.

13 Q. I'm not asking about the document.
14 I'm not asking about the document. I'm asking
15 about the agreement that's referred to in
16 paragraph 40.

17 Do you understand that?

18 A. Yes. And, yes, we had several
19 conversations about it.

20 Q. Okay. Can you describe for me
21 everything you remember about your discussions
22 with Nancy concerning the agreement that's
23 referred to in paragraph 40?

24 A. That the loans that were in place
25 would be forgiven upon a monetization -- the

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favorable monetization of certain large or liquid assets on the Highland balance sheet; and the three that were focused on was MGM, Trussway, and Cornerstone.

Q. Did she say anything in response?

A. Just, "How much are we talking about?" And I told her it was about 9 million in aggregate, and -- and I told her that it was -- that the forgiveness or the compensation was compliant regarding any credit covenants or Hunter Mountain covenants --

Q. Do you recall any --

A. -- that -- that if it were to be forgiven, that additional compensation would be compliant or permitted and really not material relative to any outstanding credit agreements that Highland had or agreements with Hunter Mountain.

Q. Is this something that you discussed with her, or is this just information that you're giving me?

A. This is what I discussed -- that's almost the entirety of the conversation. It happened over a couple different conversations,

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2 but...

3 Q. Did anybody participate in any of
4 the conversations you're describing other than
5 you and your sister?

6 A. I don't believe it was necessary, it
7 didn't include anybody else.

8 Q. Okay. Again, I'm not here to
9 question. I'm just looking for facts,
10 Mr. Dondero.

11 So nobody participated in any of
12 these conversations that you can recall other
13 than you and Nancy; is that correct?

14 A. Correct, that I -- yes, there was
15 never a third party involved in our
16 conversations. I don't know -- I don't think
17 she discussed it with anybody else, but I don't
18 know.

19 Q. Did -- was the agreement subject to
20 any negotiation? Did she make any
21 counterproposal of any kind?

22 A. No. No, I -- again, I believe both
23 of our views at the time was that it was
24 immaterial to Highland overall or any other
25 agreements.

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Q. Do you know if she sought any independent advice before entering into the agreement that you've described?

A. I don't know.

Q. Do you recall whether you provided her with any documents of any kind in connection with the discussions that led to the agreement that's referred to in paragraph 40?

A. I -- I have no -- I don't -- I don't believe -- no, I don't believe I gave her copies of the relevant Hunter Mountain limitations, or whatever. I just spoke to her about it.

Q. Okay. I'm just asking -- I'm asking a broader question: Do you recall giving her any documents of any kind in connection with the discussions that led to the agreement in paragraph 40?

A. Not -- not that I recall. She -- she may -- she may have some, but I don't remember.

Q. Do you know if there were any resolutions that were adopted by Highland to reflect the agreement that's referred to in

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paragraph 40?

A. Resolutions that -- no, not that I'm aware of.

Q. Did you give -- did you give Nancy a copy of the three promissory notes that were the subject of the agreement referred to in paragraph 40?

A. No.

Q. Did she ask to see any documents before entering into the agreement that's referred to in paragraph 40?

A. I -- I don't remember.

Q. Did you suggest that she speak with anybody prior to the time that she entered into the agreement that's referred to in paragraph 40?

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah. No.

BY MR. MORRIS:

Q. Do you know whether she actually spoke with anybody concerning the subject matter of the agreement that's referred to in paragraph 40 prior to the time it was entered

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into?

A. I don't know.

Q. Is there any time period by which the subsequent -- the conditions subsequent have to be fulfilled, or are they open-ended?

A. I believe it was open-ended.

Q. Under the agreement that's referred to in paragraph 40, did the debtor surrender its right to make a demand under the promissory notes?

MS. DEITSCH-PEREZ: And, again, are you talking about the debtor as in post-bankruptcy or --

MR. MORRIS: I apologize. Thank you. Thank you. Thank you. Thank you.

Withdrawn.

BY MR. MORRIS:

Q. Under the agreement that you reached with Nancy that's referred to in paragraph 40, was it your understanding that Highland surrendered its right to make a demand for payment of unpaid principal and interest under the notes?

A. I think essentially, yes.

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2 Q. Okay. What did Highland receive in
3 return for its agreement to surrender its right
4 to make a demand for unpaid principal and
5 interest, if anything?

6 A. I think with all forgiveness of
7 notes, what it gets is it gets focus in terms
8 of the monetization and it reduces additional
9 compensation that I could have/would have taken
10 otherwise, or could have/would have been
11 entitled to otherwise.

12 So, it's -- yeah, I mean, I think
13 it's, again, heightened focused for something
14 that would be great for the debtor or great for
15 Highland at the time and reduces -- that form
16 of forgiveness becomes compensation when and if
17 it occurs, and then it -- it theoretically
18 reduces other compensation.

19 Q. So why not just forgive it at that
20 moment?

21 Why tie it to "conditions
22 subsequent"?

23 A. I thought it was more appropriate.

24 Q. Did you and Nancy discuss at all
25 what the benefit would be to Highland from this

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arrangement?

A. The focus -- the focus parts for sure.

Q. And without -- without the agreement that's referred to in paragraph 40, you wouldn't have been focused on maximizing the enterprises; is that right?

A. No.

Q. So -- I'm sorry, maybe I missed it. When you used the word "focus" -- let me -- when you use the word "focus," what do you mean?

What is the benefit to the debtor?

MS. DEITSCH-PEREZ: Object to the form.

He said "heightened focus."

A. Yeah, heightened focused was my words, which --

BY MR. MORRIS:

Q. Okay.

A. -- you know, means beyond normal focus. It means additional effort just like in any company or what we do here with other employees, for things you really want to get

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2 done or focus on, you provide that extra
3 incentive.

4 Q. Okay. So -- so that's the benefit
5 to Highland, was that you were going to have a
6 heightened focus on maximizing value; is that
7 fair?

8 MS. DEITSCH-PEREZ: Object to the
9 form.

10 A. And then also the part 2 of my
11 answer, right, which, you know, that
12 forgiveness would be compensation which
13 would -- in any given year, additional
14 compensation coming from forgiveness reduces
15 other compensation.

16 BY MR. MORRIS:

17 Q. Was that part of the agreement that
18 you reached with Nancy? Was that -- was that
19 when these notes were forgiven, you would forgo
20 an amount equivalent to the outstanding
21 principal and unpaid interest?

22 MS. DEITSCH-PEREZ: Object to the
23 form, misstates his prior testimony.

24 A. Yeah. I remember discussing the
25 focus part with her. The -- I was giving that

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2 answer when you were asking me what would be
3 the benefit or consideration to Highland and
4 then ultimately to debtor. I was giving you
5 compensation answer.

6 BY MR. MORRIS:

7 Q. Okay. So I just -- but I do want to
8 try to understand from your perspective the
9 benefit to the debtor.

10 And, one, you told me about the
11 heightened focus, and the second --

12 A. Right.

13 Q. -- I think you said, and correct me
14 if I'm wrong, that it would relieve the debtor
15 of paying some compensation in the future.

16 Am I mistaken about that?

17 A. Yeah, I mean -- I'm sorry. Repeat
18 that one more time, please.

19 Q. I believe you said that the second
20 benefit to Highland from entering into the
21 agreement referred to in paragraph 40 is that
22 it would relieve them of a future obligation to
23 pay compensation in the same amount.

24 Do I have that right?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. Maybe not exactly "the same amount,"
4 but it would -- it would -- it would reduce
5 comp -- yes, it would -- it would, like, in the
6 next cycle, reduce -- or when it was realized,
7 would likely reduce comp then.

8 BY MR. MORRIS:

9 Q. Okay. And by what amount would it
10 likely reduce comp, then?

11 A. I don't know. By significant --
12 by -- by a significant amount, by something
13 similar to the 9 million bucks.

14 Q. Okay. So, is there any -- I'm just
15 trying to understand your perspective.

16 One of the benefits from entering
17 into the agreement referred to in paragraph 40
18 is that upon the realization of the forgiveness
19 of the debt, Highland or the debtor, whatever
20 the case may be, in the future would be
21 relieved from paying you an amount similar to
22 the principal amount of the notes?

23 Do I have that right?

24 A. Yeah, or -- or -- yeah. I guess the
25 reason why I keep going back and forth on the

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exactness of the answer is that if -- there's -- depending on what the compensation target is and whether or not you wanted to grow something up or you're looking for a net amount, but forgiveness of debt becomes a taxable event with no -- no additional ability to pay taxes. So it's usually not an exact offset to future compensation, the way we've done it here historically.

Q. In the agreement that you reached with Nancy that's referred to in paragraph 40, were there any other -- withdrawn.

In the agreement that you reached with Nancy that's referred to in paragraph 40, were there any circumstances under which you would have been obligated to pay all unpaid principal and interest under the notes?

A. If the illiquid assets weren't -- or if -- if none of the illiquid assets were monetized.

Q. But you were -- you were, at the time you entered into this oral agreement, in control of whether or not to monetize those illiquid assets, right?

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2 A. And I expected they would be over
3 time, yes.

4 Q. Okay. So, based on your control of
5 the enterprise at the time that you entered
6 into the agreement, is there any -- did you
7 have any -- any scenario under which you
8 believed you might actually have to pay back
9 the unpaid principal and interest due under the
10 notes?

11 A. If they weren't monetized.

12 Q. Okay. Anything else?

13 A. Assets weren't monetized, yeah.

14 Q. Anything else?

15 A. That's -- that's my recollection.

16 Q. If -- if you -- have the "conditions
17 subsequent" been met yet?

18 A. I believe the announcement of the
19 MGM sale will meet the conditions precedent
20 when it closes four or five months from now.

21 Q. Okay. But none of them have been
22 met -- have the conditions subsequent been met
23 as of today?

24 A. Have the conditions subsequent been
25 met today. I don't have awareness of --

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despite objecting vehemently, we don't have awareness of what the debtor is doing with Trussway or Cornerstone. So there's a potential that those could have triggered, but I don't -- I don't have -- I don't have awareness.

Q. Okay. Do you know -- and forgive the question, sir, honestly. But do you know --

A. Sure.

Q. -- whether your estate would be liable to pay all of the undue principal -- unpaid principal and interest if you passed before the conditions subsequent were satisfied?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know that answer.

BY MR. MORRIS:

Q. That wasn't something that you and your sister discussed in January or February of 2019; is that fair?

A. I wasn't contemplating that event at that point in time.

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Q. That's why I say "forgive the question," sir.

Did you ever ask anybody to write the agreement in paragraph 40 down on paper so that it was memorialized somewhere?

A. No.

Q. Did you and Nancy --

(Simultaneous conversation.)

A. I'm sorry, go ahead.

BY MR. MORRIS:

Q. Do you and Nancy communicate by email from time to time?

A. Almost entirely phone. I -- from time to time, but it's almost entirely phone.

Q. All right. Let's -- let's move on.

A. Can I clarify something from before?

Q. Of course.

A. If the assets were never monetized or the -- the notes would stay in place and not be forgiven.

If the assets were all monetized below cost or what was considered a less favorable scenario, then it would be -- to forgive it, something would have to be

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monetized above cost, you know; but if they were all monetized below cost, that would make the note payable.

Q. I appreciate that.

MR. MORRIS: Let's go to the next document, document Number 11.

(Exhibit 11 introduced.)

MR. MORRIS: If we could just scroll down, please.

(Scrolling.)

BY MR. MORRIS:

Q. All right. Now, these are your objections and responses to the debtor's second request for admissions. Do you see that?

A. Yes.

MR. MORRIS: And let's scroll down to page 4, please.

(Scrolling.)

BY MR. MORRIS:

Q. Okay. Do you recall whether you saw this document before it was served and filed on your behalf?

A. Yes. Can we go all the way through, just go all the way down?

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2 Was this notarized, also?

3 Q. No, because these are responses to
4 requests to admit. You only --

5 A. Okay.

6 Q. You only notarize responses to
7 interrogatories, for whatever reason. So these
8 were not. Yeah.

9 But I'm just asking you if you have
10 a memory of reviewing the requests for
11 admission before they were served and filed on
12 your behalf?

13 A. Yes.

14 Q. Okay. And did you authorize your
15 lawyers to serve and file this document on your
16 behalf?

17 A. Yes.

18 Q. Okay. Looking at Request For
19 Admission Number 1, it asks you to admit that
20 in December 2019, you made a payment to the
21 debtor, a portion of which was applied to
22 reduce principal and/or interest due under one
23 or more of the notes.

24 Have I read that correctly?

25 A. Yes.

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2 Q. And you've admitted that that
3 statement is true and accurate as written,
4 right?

5 A. Yeah, I believe so. The -- yeah, I
6 believe so. Let me let you ask the questions.

7 Q. Okay. Do you have any reason to
8 believe, as you sit here right now -- let me
9 ask you a different question.

10 Do you want to amend your response
11 in any way right now?

12 A. I -- I'm not aware of small amounts
13 in terms of, like, interest or principal; and
14 then sometimes the tax guys will say periodic
15 interest payments are important to -- for the
16 character of the notes, so sometimes periodic
17 interest payments are made. Sometimes I think
18 they peck on some of the notes.

19 I don't -- I don't know or remember,
20 but I hope that something like this is correct.
21 Sometimes, if there was a need for cash into
22 Highland, the easiest way to -- for me or a
23 different entity to put cash into Highland was
24 to reduce a principal amount of a note with the
25 thought that we could create new notes or

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2 increase another note later.

3 So how many times or how often
4 interest payments were made or if there was
5 some small principal payment made at some
6 point, I don't know the details; but I'm hoping
7 that's accurate.

8 Q. Okay. We looked at three notes that
9 were signed by you in 2018, correct?

10 A. Yes.

11 Q. You signed other notes in favor of
12 Highland prior to that time, correct?

13 A. I believe -- yeah. I mean, I
14 believe there were numerous notes beyond these.

15 Q. Were -- were -- did you ever sign a
16 note in favor of Highland that was forgiven?

17 A. I don't -- I don't know.

18 Q. Do you have any recollection of ever
19 paying taxes in connection with a note that was
20 subsequently forgiven by Highland?

21 A. If there was -- if there was a
22 forgiveness and it was taxable, I would have
23 paid the taxes. We were compliant in that
24 regard. I'm a hundred percent comfortable
25 we're compliant, but I don't know.

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2 Q. Okay. And I appreciate -- I didn't
3 mean to suggest that you weren't compliant,
4 sir. I'm just asking you if you can identify
5 any note that you made in favor of Highland
6 that was ever forgiven.

7 MS. DEITSCH-PEREZ: And I'm just
8 going to object because, while he's not
9 30(b)(6) witness, this is a deposition
10 taken in a particular case and he may have
11 not looked at the records going back to
12 2000, or whatever, that's -- since when
13 Highland was started.

14 MR. MORRIS: I just can't tell you
15 how inappropriate that is.

16 BY MR. MORRIS:

17 Q. Go ahead, Mr. Dondero.

18 A. The same answer, I don't know.

19 Q. Okay. You did, in fact, pay in full
20 all principal and interest due on notes that
21 you made in favor of Highland other than the
22 three notes at issue in this case, correct?

23 MS. DEITSCH-PEREZ: Object to the
24 form.

25 A. I -- I don't know. I would repeat

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the answer I gave a few minutes ago when I kind of rambled about cash management.

BY MR. MORRIS:

Q. Do you know how many notes you made in favor of Highland beyond the three that are the subject of this litigation?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I do not, regarding myself personally.

I am aware that the aggregate amount of affiliated notes is approximately 70 or \$80 million, including my notes; but that's it. I mean, that's all I know.

BY MR. MORRIS:

Q. All right. I'm just asking you about you, in your individual capacity.

A. I don't know.

Q. You don't know --

(Audio distortion.)

THE REPORTER: You broke up, sir.

BY MR. MORRIS:

Q. You don't know the number of notes -- (audio distortion) -- Highland beyond

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2 these three, correct?

3 A. Correct.

4 Q. And you can't recall whether any --
5 any notes that you made in favor of Highland
6 were ever forgiven, correct?

7 A. I -- I don't know.

8 Q. Okay. So, did you ever object to
9 the application of the payment referred to in
10 Request For Admission Number 1 to principal
11 and/or interest due under one or more of the
12 notes?

13 Did you ever object to the
14 application of the payment in that way?

15 MS. DEITSCH-PEREZ: Object to the
16 form.

17 A. I think the decision on how to
18 handle cash needed at Highland was entirely
19 made and the application to note principal or
20 interest was -- was entirely decided by the
21 accounting group.

22 BY MR. MORRIS:

23 Q. But did you know that decision was
24 made in or around December 2019?

25 A. Not really, no. Not specifically.

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Q. Well, you've admitted to the fact.

So, when did you learn that in December 2019 a payment made on your behalf, at least a portion of which was applied to reduce principal and/or interest due under one or more of the notes? When did you learn that?

A. I don't know. It would have been as part of the process in preparing this document.

Q. So it's your testimony that somebody used your money in December 2019 to reduce principal and/or interest due under one or more of the notes without your knowledge?

A. Yeah, without my specific knowledge. There was a reason to put money in at that point in time, and then how they applied it was not my decision --

Q. Making --

A. -- not --

Q. Making a payment -- you would agree that making a payment of principle or interest under one or more of the notes conflicts with the agreement that you reached with Nancy, right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. No, that's not true.

BY MR. MORRIS:

Q. Well, the conditions subsequent hadn't arisen yet; is that fair?

A. The notes were in '18, correct?

Q. Yes, sir.

A. And then, yeah, the subsequent condition was in the first quarter of '19.

Q. Right. And then, in December of '19, a payment of principal and/or interest was made against one or more of the notes, right?

A. Yes.

Q. And I'm just asking you, sir, if that's inconsistent with the agreement that you reached with Nancy.

MS. DEITSCH-PEREZ: Object to the form.

A. And I'm saying -- I'm saying no. I mean, it's --

BY MR. MORRIS:

Q. Okay. Since learning of the payment, have you tried to identify the person who was responsible for applying your money in

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the way that's described in Request For
Admission Number 1?

A. No.

MR. MORRIS: Can we go down to
number 4, please?

BY MR. MORRIS:

Q. In your amended answer, I think you
asserted that the -- "each note is ambiguous."
Do I have that right?

We can go back, if you would like to
look?

A. Is this admission number 4? Is that
where you're pointing to?

Q. It is, and I'll just read it. It
refers to paragraph 45 of the amended answer,
and I'll read it. But I'm happy to go back and
put it on the screen, if you'd would like.

But it says simply: "Defendant
further asserts that each note is ambiguous."

So request for number 4 asks you to
admit that before you served that amended
answer, you had never informed the debtor of
your belief that any provision of the notes was
ambiguous.

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2 Do you see that?

3 A. Yes.

4 Q. And you've denied that request for
5 admission.

6 Do you see that?

7 A. Yes.

8 Q. So, who did you inform at the debtor
9 of your belief that a provision of the notes
10 was ambiguous?

11 Who did you --

12 MS. DEITSCH-PEREZ: Object.

13 BY MR. MORRIS:

14 Q. Who did you communicate that to?

15 MS. DEITSCH-PEREZ: Object to the
16 form, no foundation.

17 A. I -- I -- I don't -- "I don't know"
18 is my answer to pretty much any question you
19 could ask there.

20 BY MR. MORRIS:

21 Q. This is -- you're denying the
22 request for admission, and that's your right.

23 Did you ever inform the debtor of
24 your belief that a provision of the notes was
25 ambiguous?

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2 MS. DEITSCH-PEREZ: Object, no
3 foundation.

4 A. As -- ask the question again,
5 please.

6 BY MR. MORRIS:

7 Q. Did you ever inform the debtor of
8 your belief that any provision of the notes was
9 ambiguous?

10 MS. DEITSCH-PEREZ: Object, no
11 foundation.

12 A. You know, I don't know what
13 conversations were had between lawyers. I -- I
14 don't know.

15 BY MR. MORRIS:

16 Q. Okay. So I'm going to ask a
17 slightly different question because of your
18 answer: Can you tell me whether you or anybody
19 acting on your behalf ever informed the debtor
20 of your belief that any provision of any of the
21 notes was ambiguous?

22 MS. DEITSCH-PEREZ: Object, no
23 foundation.

24 A. I'm going to have to say, yes, I
25 believe that statement is true; but I don't

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2 have specific knowledge.

3 BY MR. MORRIS:

4 Q. Do you have any knowledge, can you
5 identify any person who informed the debtor of
6 your belief?

7 A. I don't have specific knowledge. I
8 don't -- I don't -- I don't know.

9 Q. Can you tell me when the debtor was
10 informed of your belief that any provision of
11 the notes was ambiguous?

12 MS. DEITSCH-PEREZ: Object, no
13 foundation.

14 A. I don't know.

15 BY MR. MORRIS:

16 Q. Can you identify the person who was
17 acting on behalf of the debtor who was informed
18 by you or anyone acting on your behalf of your
19 belief that any provision of the notes was
20 ambiguous?

21 MS. DEITSCH-PEREZ: Object, no
22 foundation.

23 A. I don't know.

24 BY MR. MORRIS:

25 Q. Okay.

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2 MR. MORRIS: Let's go to the next
3 exhibit, please.

4 THE WITNESS: Is this a good time
5 for a lunch break?

6 MR. MORRIS: Yeah. I'm happy to do
7 it. I'm trying to move as quickly as I
8 can, Mr. Dondero. This is a little bit
9 longer than you and I usually sit for, and
10 I apologize for that, but I'm happy to take
11 as long a break as you -- as you need.

12 MS. DEITSCH-PEREZ: How long do you
13 think you have for the rest of the
14 deposition? What's your guess?

15 MR. MORRIS: I would say more than
16 an hour, less than two.

17 MS. DEITSCH-PEREZ: Do you want to
18 take a really short --

19 THE WITNESS: Can we take a half
20 hour, like 12:30 our time, 1:30 East Coast
21 time?

22 MR. MORRIS: Of course.

23 THE WITNESS: Yeah. So, we'll take
24 35 minutes, and then we'll get back to it.
25 You know --

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2 THE REPORTER: Are we still on the
3 record, please?

4 MR. MORRIS: Yes.

5 COURT REPORTER: Okay.

6 MS. DEITSCH-PEREZ: We'll --

7 MR. MORRIS: If you have time
8 constraints -- if you have time
9 constraints, Mr. Dondero, I'm prepared to
10 keep going. I'll take a shorter break. I
11 don't want -- you know, I apologize for the
12 burden, but these are relevant questions.

13 THE WITNESS: Yeah, let's -- let's
14 do 35 minutes, and we will try and wrap it
15 up in -- like you're saying, like an hour
16 or less than two.

17 MR. MORRIS: Yeah.

18 THE WITNESS: Yeah. I do need to be
19 someplace in the early afternoon.

20 MR. MORRIS: I assure you, I'll do
21 my best to keep to that time frame.

22 THE WITNESS: Okay. Thank you.

23 THE REPORTER: And we're off the
24 record.

25 (Lunch recess held.)

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2 MR. MORRIS: Can we put up the next
3 exhibit, which I believe is Number 12?

4 (Exhibit 12 introduced.)

5 BY MR. MORRIS:

6 Q. Okay. So, Mr. Dondero, these are
7 interrogatories, and so I direct you first to
8 the last page of the document, the Verification
9 page.

10 And is that your signature, sir?

11 A. Yes.

12 Q. Now, this wasn't notarized. Is
13 there a reason why you didn't get this
14 notarized?

15 A. No.

16 Q. Okay.

17 MR. MORRIS: If we could just scroll
18 back up.

19 BY MR. MORRIS:

20 Q. But is the Verification true --

21 MR. MORRIS: If we just go back to
22 it.

23 BY MR. MORRIS:

24 Q. At the time you signed this
25 document, had you read the Defendant's

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Objections and Answers to Highland Capital
Management, L.P.'s Second Set of
Interrogatories?

A. Yes.

Q. And did you believe that the facts
stated therein were both within your personal
knowledge and were true and correct?

A. Yes.

Q. Okay.

MR. MORRIS: Can we go to the
substance of the document on page 4 of 6?

BY MR. MORRIS:

Q. Okay. So, in the answer to
Interrogatory No. 1, you identify the
conditions subsequent that were the subject of
the agreement that we've been talking about
that you and Nancy entered into.

Do I have that right?

A. Yes.

Q. And to the best of your knowledge,
does the answer that's set forth in response to
Interrogatory No. 1 fully and accurately set
forth the conditions subsequent that were the
subject of the agreement?

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2 MS. DEITSCH-PEREZ: Object to the
3 form.

4 A. Repeat the question, please.

5 BY MR. MORRIS:

6 Q. Does this answer to Interrogatory
7 No. 1 set forth, to the best of your knowledge
8 and understanding, the conditions subsequent
9 that were part of the agreement that you and
10 Nancy entered into in January or February 2019?

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 A. Yes, large -- yes, largely --

14 BY MR. MORRIS:

15 Q. Okay.

16 A. -- or yes.

17 Q. Is there any aspect of this that you
18 believe right now is incorrect?

19 A. No.

20 Q. Is there any aspect of your
21 agreement with Nancy on the conditions
22 subsequent that's not described in this answer?

23 MS. DEITSCH-PEREZ: Object to the
24 form.

25 A. My recollection is that that largely

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captures it.

BY MR. MORRIS:

Q. Okay. There's a reference there to, quote, "the disposition of the portfolio company interests managed and/or owned directly or indirectly by Highland and/or its affiliates or managed funds."

Do you see that?

A. Yes.

Q. What does that refer to?

A. Just, you know, MGM is owned in a variety of places, Cornerstone is owned in a variety of places, and then Trussway is owned in a subsidiary of Highland.

So there -- I believe it's to capture the fact of the different ownerships or controls of those three different investments.

Q. Are those the only portfolio company interests managed and/or directly or indirectly by Highland or its affiliates -- withdrawn.

That was bad.

This answer doesn't refer specifically to any particular assets, correct?

A. It does not.

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2 Q. Okay.

3 A. Well, yeah. I think what the intent
4 was -- those three companies I just mentioned
5 were always considered portfolio companies.
6 There have been a few others over the years,
7 but those are -- those -- I think they're
8 trying to capture them that way, but I only
9 remember talking to her about those three.

10 Q. Are there any other portfolio
11 company interests that are managed and/or owned
12 directly or indirectly by Highland and/or its
13 affiliates or managed funds? Are there any
14 other assets?

15 MS. DEITSCH-PEREZ: Object to the
16 form.

17 A. There were some lesser private
18 equity investments or companies, yes.

19 BY MR. MORRIS:

20 Q. Can you identify them?

21 A. CCS Medical. I think OmniMax was
22 one. Kerri International. Yeah, those --
23 those are ones that come to mind.

24 Q. Okay. But notwithstanding the
25 answer here, to the best of your recollection,

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the agreement that you had with Nancy pertained only to MGM, Cornerstone, and Trussway. Do I have that right?

MS. DEITSCH-PEREZ: Object to the form.

A. The monetization of those three were the -- were the conditions subsequent, yes.

BY MR. MORRIS:

Q. Okay. And there's a reference there to being disposed of, quote, on a favorable basis.

Do you see that?

A. Yes.

Q. What does that mean?

A. Above cost or book value.

Q. How much above cost or book value would you have to dispose of MGM, Cornerstone, and Trussway in order to trigger the conditions subsequent?

A. There wasn't -- there was just monetization on a favorable basis. There wasn't a specific amount on each individual one. It only took one to trigger it.

Q. Oh. So the sale of any of those

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three assets would trigger the conditions subsequent?

A. Correct.

Q. Okay. And who decided whether the asset was sold on a favorable basis?

Who made that decision, under your agreement with Nancy?

A. It was just defined relative to cost, so it was just -- it was just a factual -- there's nothing to decide. It would just be a factual answer.

Q. So, I just want to make sure I understand.

Your agreement with Nancy was that --

A. Yes.

Q. -- that -- all right. Withdrawn.

Your agreement with Nancy in January or February 2019, was that if any of MGM, Cornerstone, or Trussway was sold at cost, the debtor would forgive your obligations under the three notes.

Do I have that right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. If any of them were sold above cost, it would -- monetization would trigger the -- the three notes -- forgiveness of the three notes, yes.

BY MR. MORRIS:

Q. Okay. And I just want to see if I can understand: Did you and Nancy discuss in January or February 2019 how much above cost the sale would have to be in order for the debtor to forgive your obligations under the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. No. It just had to be above cost, not a amount above cost.

BY MR. MORRIS:

Q. Okay.

A. Because just monetizing it -- just monetizing it and getting liquidity for an illiquid investment, even if it was at cost, is good. So something above cost is great. And those are all big assets, and the notes were small.

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2 Q. Okay. So, again, I just want to
3 really understand your agreement with Nancy.

4 Did you and her specifically agree
5 in January or February 2019 that if you sold
6 either MGM or Cornerstone or Trussway for at
7 least \$1 more than cost, then your obligations
8 under the three notes would be forgiven?

9 MS. DEITSCH-PEREZ: Object to the
10 form.

11 A. Before I answer that, I just -- can
12 you repeat so I can get all the subjects and
13 participants straight in my head from the
14 beginning of that question?

15 BY MR. MORRIS:

16 Q. Sure. Did you and Nancy agree in
17 January or February 2019 that if Highland sold
18 either MGM or Cornerstone or Trussway for an
19 amount that was equal to at least \$1 more than
20 cost, that -- that Highland would forgive your
21 obligations under the three notes?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I believe that is correct.

25 BY MR. MORRIS:

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2 Q. Thank you very much.

3 Was Grant Scott the trustee of the
4 Dugaboy trust in January or February 2019?

5 A. He was at one point. I don't know
6 if he was -- I don't know when he was the
7 trustee, but he got replaced at a -- some point
8 in time.

9 Q. Do you know if it was before or
10 after the petition date?

11 A. Before or after the petition date.
12 It was before the petition date.

13 MR. MORRIS: Okay. I'd ask for the
14 production of any documents that show that
15 Nancy Dondero was the trustee of the
16 Dugaboy trust in January or February 2019.

17 MS. DEITSCH-PEREZ: I'll take your
18 request under advisement.

19 BY MR. MORRIS:

20 Q. Now, the last portion of
21 Interrogatory No. 1, the answer to it, refers
22 to a, quote, "basis wholly outside Dondero's
23 control."

24 Do you see that?

25 A. Uh-huh.

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Q. Was that part of the agreement that you entered into with Nancy in January or February 2019?

A. Yeah. It was probably unnecessary complexity, but yes.

Q. Was there anything that you envisioned in January or February 2019 that would have caused you to lose control of Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. No, and I wasn't -- that wasn't the thought process.

BY MR. MORRIS:

Q. So what was the thought process? Why was that phrase part of -- why -- withdrawn.

Did you include that -- that aspect of the conditions subsequent -- withdrawn.

Who decided that one of the conditions subsequent would be the disposition of the assets that you've described, quote, "wholly outside of Dondero's control."

Whose idea was it to put that into

1 Dondero - 5-28-2021

2 the agreement?

3 A. It was -- it was mine. And, again,
4 it was probably unnecessary complexity, but...

5 Q. And why did you want that piece of
6 it into the agreement?

7 A. MGM ended up being a success story,
8 but the value of MGM and the prospects of MGM
9 have bounced around considerably over the last
10 decade. And we never owned more than 17 or
11 18 percent and there was a 32 percent holder,
12 and Carl Icahn was involved at different points
13 in time. There was definitely a chance that,
14 over our objections, it could have been sold at
15 a lower price without our support.

16 And as far as Cornerstone was
17 concerned, there was a half or a majority that
18 was in the Restoration Fund that had a whole
19 bunch of outside investors in it; and,
20 theoretically, that could have been sold
21 without our -- or against our recommendations.

22 So it was really meant to capture
23 those two possibilities.

24 Q. Did you tell Frank Waterhouse at any
25 time about your agreement with Nancy that's

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2 subject to the conditions subsequent referred
3 to here in Interrogatory No. 1?

4 A. I don't know if Frank knew the
5 specifics. I think Frank really was aware that
6 the loans could and would likely be forgiven
7 and -- yes. That's all to that answer.

8 Q. Did you tell him that?

9 A. Yes, and -- I mean, partly he knew
10 it from the history of Highland, and the
11 structure of the notes are structured in a way
12 that facilitates forgiveness.

13 MR. MORRIS: I move to strike.

14 BY MR. MORRIS:

15 Q. Did you ever tell Frank Waterhouse
16 about the agreement that you reached with
17 Nancy?

18 MS. DEITSCH-PEREZ: Object to the
19 form.

20 A. Not -- not the specifics.

21 BY MR. MORRIS:

22 Q. Did you ever mention anything about
23 any aspect of your agreement to Nancy -- with
24 Nancy to Frank Waterhouse?

25 MS. DEITSCH-PEREZ: Object to the

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form.

A. I -- listen, I don't -- I don't remember talking to him about the specifics, but, in general, I -- he -- he -- he was deeply involved in the thought process and the conclusion that the notes were forgiven or going to be for- --

MR. MORRIS: I'm going to move to strike.

BY MR. MORRIS:

Q. And I'm not asking you to get into his head to tell me what you think he knew. I'm asking you about what you told him.

Did you ever tell Mr. Waterhouse that you reached an agreement with Nancy pursuant to which the debtor had agreed not to collect on the notes subject to the conditions subsequent set forth in your answer to Interrogatory No. 1?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't remember. I -- I don't remember enough to say conclusively one way or the other.

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2 BY MR. MORRIS:

3 Q. Do you have any recollection of
4 telling any employee at Highland at any time of
5 your agreement with Nancy?

6 MS. DEITSCH-PEREZ: Object to the
7 form.

8 A. I -- I don't know.

9 BY MR. MORRIS:

10 Q. Okay. Did you tell anybody employed
11 or representing the debtor at any time of your
12 agreement with Nancy?

13 MS. DEITSCH-PEREZ: Object to the
14 form.

15 A. Not that I -- not that I recall.
16 Again, I didn't think there was a reason to,
17 initially.

18 MR. MORRIS: Can we go to
19 Exhibit 13, please?

20 (Exhibit 13 introduced.)

21 BY MR. MORRIS:

22 Q. All right. When you were the CEO,
23 did PricewaterhouseCoopers serve as Highland's
24 auditors?

25 MS. DEITSCH-PEREZ: Object to the

1 Dondero - 5-28-2021

2 form.

3 A. At different times they were, and
4 then KPMG was. I don't remember who it was in
5 '17.

6 BY MR. MORRIS:

7 Q. Okay. And it's a fact, is it not,
8 that until at least year-end 2018, Highland had
9 audited the financial statements prepared for
10 itself, right?

11 A. I don't know. I wasn't aware they
12 stopped.

13 Q. Okay. Okay.

14 So, I'm putting up on the screen the
15 "Consolidated Financial Statements and
16 Supplemental Information" for the period
17 December 31st, 2017.

18 Do you see that?

19 A. Uh-huh.

20 MR. MORRIS: And if we can go first
21 to the page marked 33470, which is, I
22 think, the --

23 And is this -- does this refresh
24 your recollection that PWC served as
25 Highland's independent auditors for the

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2 financial statements prepared for the year
3 ending December 31st, 2017?

4 MR. MORRIS: If you could scroll
5 down to the bottom of the page so
6 Mr. Dondero can see the date.

7 A. Okay.

8 BY MR. MORRIS:

9 Q. Do you see that?

10 A. If you're asking me to agree that it
11 was Pricewaterhouse, yes, I agree.

12 Q. And do you see that they signed
13 their letter on May 18th, 2018? Do you see
14 that?

15 A. Yeah.

16 Q. And do you see, towards the top of
17 the page, there's a statement about
18 "Management's Responsibility for the
19 Consolidated Financial Statements"?

20 A. Yes.

21 Q. And that's a pretty standard clause
22 that auditors include in audited financial
23 statements, in your experience; isn't that
24 right?

25 A. Yes.

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2 MR. MORRIS: Can we go to the
3 page -- the next page, 3471?

4 BY MR. MORRIS:

5 Q. This is the Consolidated Balance
6 Sheet for the period December 31, 2017, and
7 it's been redacted except to show "Notes and
8 other amounts due from affiliates." Do you see
9 that?

10 A. Uh-huh.

11 Q. When you were the CEO, did Highland
12 carry the Notes and Other Amounts Due from
13 Affiliates as assets on its balance sheet?

14 A. Yes.

15 Q. Okay. And that's what's reflected
16 on this page; is that correct?

17 A. I mean, that's what the heading
18 says, yes.

19 Q. Okay.

20 MR. MORRIS: Can we go to Bates
21 number 33499.

22 (Scrolling.)

23 BY MR. MORRIS:

24 Q. And you're aware, are you not, that
25 in the Notes to the financial statements, PWC

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described all of the notes and other amounts that were due to affiliates -- due from affiliates?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes.

BY MR. MORRIS:

Q. And were you aware that in the financial statements prepared for Highland for the period ending December 31st, 2017, that PWC included in its notes amounts due from Highland Capital Management Fund Advisors, L.P.?

A. The 0.2 million in the first sentence, is that your question?

Q. Yes. You know, the whole -- who at Highland was responsible for providing information to PWC relating to Notes and Other Amounts Due from Affiliates?

A. The accounting department.

Q. And who was the head of the accounting department as of the end of 2017?

A. Frank Waterhouse.

Q. And did Frank Waterhouse remain the head of the accounting department until at

1 Dondero - 5-28-2021

2 least the end of 2020, to the best of your
3 knowledge?

4 A. Yes.

5 Q. And when did Frank Waterhouse become
6 the head of the accounting department?

7 A. A few years earlier.

8 Q. So, to the best of your
9 recollection, Frank Waterhouse has been the
10 head of the accounting department on a
11 continuous basis from the period approximately
12 2015 until the end of 2020; is that right?

13 A. If not earlier, but yes. But I
14 don't know the dates.

15 Q. Okay.

16 MR. MORRIS: Can we scroll down to
17 the next to the last paragraph there, the
18 one that refers to Mr. Dondero? There you
19 go.

20 BY MR. MORRIS:

21 Q. Do you see that, according to this
22 financial report, you "did not issue any new
23 promissory notes to the Partnership" during the
24 year 2017?

25 A. Yeah.

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2 Q. And to the best of your
3 recollection, was that accurate?

4 A. Yes.

5 Q. Okay. And to the best of your
6 recollection, was it also accurate that as of
7 the end of 2017, the total interest and
8 principal due on an -- on outstanding
9 promissory notes was approximately 14 and a
10 half million dollars and was payable in annual
11 installments throughout the term of the note?

12 A. Yes.

13 Q. And prior to your execution of the
14 demand notes, do you recall that you had made,
15 in favor of Highland, certain term notes?

16 A. I don't -- I don't recall.

17 Q. Do you remember having to make
18 payments to Highland to satisfy the terms of
19 any notes prior to 2018?

20 A. I can't recall. I didn't refresh --
21 I didn't refresh myself on anything else, on
22 any other notes for this deposition.

23 Q. Okay. But looking at this
24 paragraph, is there anything about it that you
25 currently believe is inaccurate or incorrect?

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2 MS. DEITSCH-PEREZ: Object to the
3 form.

4 A. I -- I don't know. I don't know.

5 BY MR. MORRIS:

6 Q. Okay. We can scroll through the
7 entire page, if you would like, but I just --
8 I'll ask the question first, and then you tell
9 me what you need to read.

10 Do you recall whether
11 PricewaterhouseCoopers' audited financial
12 statements ever disclosed the forgiveness of
13 any loan ever made by Highland to you or any of
14 its employees?

15 MS. DEITSCH-PEREZ: Object to the
16 form.

17 A. I don't -- I don't know.

18 BY MR. MORRIS:

19 Q. Do you have a recollection of any?

20 A. I don't have a recollection --
21 recollection of any. As a CPA, I'm not sure
22 it's required until it's forgiven, but I'm not
23 the expert. I can't remember seeing it or not
24 seeing it.

25 Q. Did the debtor make --

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2 MR. MORRIS: You know what? Let's
3 look -- let's look at each of these. We
4 can start with the bottom of the page.

5 BY MR. MORRIS:

6 Q. Can you identify any of the makers
7 of the notes that are referred to in this
8 section that are not directly or indirectly
9 owned or controlled by you, other than
10 Mr. Okada?

11 So, if we start at the top, is
12 Highland Capital Management Fund Advisors,
13 L.P., an entity that is either directly or
14 indirectly owned or controlled by you?

15 A. Yes.

16 Q. NexPoint Advisors, L.P., the next
17 paragraph, is that an entity that is directly
18 or indirectly owned or controlled by you?

19 A. Yes.

20 Q. HCRE Partners, LLC, is that an
21 entity that is directly or indirectly owned or
22 controlled by you?

23 A. Yes.

24 Q. Highland Capital Management
25 Services, Inc., is that an entity that is

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2 directly or indirectly owned or controlled by
3 you?

4 A. Yes.

5 Q. All right. And you're the subject
6 of the next paragraph, right?

7 The next paragraph relates to Mark
8 Okada. Are you aware of any loan that was ever
9 made by Highland to Mr. Okada that was
10 forgiven?

11 A. I don't know.

12 Q. Okay.

13 MR. MORRIS: Can we go to the next
14 paragraph, please?

15 BY MR. MORRIS:

16 Q. There's a reference to The Dugaboy
17 Investment Trust. Do you see that?

18 A. Yes.

19 Q. Either your sister or Mr. Scott have
20 served as the sole trustee of Dugaboy since the
21 time it was created; is that correct?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I -- I don't know.

25 BY MR. MORRIS:

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2 Q. Do you recall anybody at any time
3 serving as the trustee of The Dugaboy
4 Investment Trust other than Nancy or Mr. Scott?

5 MS. DEITSCH-PEREZ: Object to the
6 form.

7 A. I -- I don't remember.

8 BY MR. MORRIS:

9 Q. Are you the lifetime beneficiary of
10 The Dugaboy Investment Trust?

11 A. Yes.

12 Q. And have you been -- withdrawn.

13 Are you the sole lifetime
14 beneficiary of The Dugaboy Investment Trust?

15 MS. DEITSCH-PEREZ: Object to the
16 form.

17 A. I believe so.

18 BY MR. MORRIS:

19 Q. Okay. And has that been true since
20 the time The Dugaboy Investment Trust was
21 created?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 A. I don't know for sure.

25 BY MR. MORRIS:

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2 Q. Okay. The next paragraph refers to
3 a Contribution Agreement. Do you see that?

4 A. Yes.

5 Q. Are you familiar who the affiliated
6 trust is that entered into the Contribution
7 Agreement?

8 A. No. I'm willing to be refreshed,
9 but I don't remember.

10 Q. Is it the Hunter Mountain Investment
11 Trust?

12 A. It could be.

13 Q. Can you think of any other
14 affiliated trust other than Hunter Mountain who
15 carried a note receivable in the amount of
16 \$63 million due to the partnership?

17 A. No.

18 Q. Do you directly or indirectly own or
19 control the Hunter Mountain Trust?

20 A. No.

21 Q. Let's go -- do you have any interest
22 in the Hunter Mountain Trust?

23 A. No.

24 Q. Directly or indirectly?

25 A. No.

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2 MR. MORRIS: Can we go to 33510,
3 please?

4 (Scrolling.)

5 BY MR. MORRIS:

6 Q. Just to refresh your recollection,
7 PricewaterhouseCoopers's letter is dated
8 May 18th, 2018.

9 And you see there, note 16 refers to
10 "Subsequent Events." Do you see that?

11 A. Yep.

12 Q. So, sometime between January 1st and
13 May 18, 2018, which is the report date,
14 PricewaterhouseCoopers is disclosing that you
15 issued promissory notes in the amount of
16 \$11.7 million. Do you see that?

17 A. Yes.

18 Q. Do you believe that was true and
19 accurate at the time? Is that your
20 recollection?

21 A. Yes.

22 Q. Now, of the three notes that we
23 looked at, only one of them was issued before
24 May 18, 2018. That was the 2 and a half
25 million-dollar note.

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2 Do you remember that?

3 I apologize. Withdrawn.

4 That was the 3.825 million-dollar
5 note.

6 Do you remember that?

7 A. Okay. Yes.

8 Q. Okay. So, if that note was 3. --
9 let's just call it roughly \$3.9 million, does
10 that mean that there were \$7.8 million of other
11 notes that you made in favor of Highland during
12 the first five months of 2018?

13 MS. DEITSCH-PEREZ: Object to the
14 form.

15 A. Yeah, I think you got the wrong --
16 well, you're -- I'm not the accounting
17 department. I'm not the auditor. My comment
18 would be our financial statements have always
19 been -- our audited financial statements have
20 always been extremely accurate and
21 Pricewaterhouse and KPMG literally do a hundred
22 percent sampling of all transactions.
23 Everything is reflected accurately in the
24 financials, and there's no missing note or
25 misstated note or unequal amount, or whatever.

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2 And I refuse to go in that direction just
3 because I don't know the details.

4 BY MR. MORRIS:

5 Q. I appreciate that, sir, and I didn't
6 mean to take you into that direction. I'm just
7 asking you if you know what accounts for the
8 difference between the \$11.7 million stated and
9 the 3.825 million-dollar note that we looked at
10 as Exhibit Number 1 that was tendered by you on
11 February 2nd, 2018. That's all.

12 A. I -- I don't know. I have no -- I
13 have no idea.

14 Q. Okay. In the course of the audit,
15 you personally sign management representation
16 letters, right?

17 A. Usually at the end.

18 Q. Yeah.

19 MR. MORRIS: So can we call the next
20 exhibit up, please?

21 (Exhibit 14 introduced.)

22 BY MR. MORRIS:

23 Q. And happy to take a look at it. I'm
24 going to point you to a couple of things.

25 MR. MORRIS: But if we could go to

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the document, it's page 9 of the document,
Bates number 33408. All right.

And scroll up to the prior page,
please. Just looking for the signatures.

BY MR. MORRIS:

Q. All right. Is that your signature
there, sir?

A. Yeah.

Q. And did you sign this management
representation letter on behalf of Highland in
your capacity as the Strand Advisors, Inc.,
general partner on or about May 18th, 2018?

A. Yeah.

Q. And Frank Waterhouse, is that -- do
you know that to be his signature below?

A. It resembles it, yes.

Q. Okay. Do you have an understanding
of why you signed this document?

A. Despite all their auditing and
double-checking of all source information,
they -- they want a validation from management,
also.

Q. And is that standard and customary,
to the best of your experience?

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2 A. Yes.

3 Q. Okay.

4 MR. MORRIS: Can we go back to the
5 first page, please?

6 (Scrolling.)

7 BY MR. MORRIS:

8 Q. Do you see in the second paragraph,
9 the last sentence, there's a reference to
10 "materiality"?

11 MR. MORRIS: If you can just scroll
12 down a bit.

13 BY MR. MORRIS:

14 Q. And it says, quote, "Materiality
15 used for purposes of these representations is
16 \$2,000,000."

17 Am I reading that correctly?

18 A. Yes.

19 Q. And did you understand that Highland
20 was to provide to PWC, so that it could prepare
21 the audited financial statements with
22 information relating to issues and transactions
23 that were material, using that definition?

24 A. Yes.

25 MR. MORRIS: Let's go to the next

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2 document.

3 (Exhibit 15 introduced.)

4 BY MR. MORRIS:

5 Q. These are the audited financials for
6 the period ending December 31st, 2018.

7 MR. MORRIS: And if you could go to
8 the third page, the one ending in 33424.

9 No, above. Yeah, right there.

10 Do you see PricewaterhouseCoopers
11 signed the audit letter on June 3rd, 2019?

12 A. Yep.

13 MR. MORRIS: And if we can scroll up
14 to the top of the page, it has the same
15 statement concerning "Management's
16 Responsibility for the Consolidated
17 Financial Statements" that we looked at
18 earlier in the 2017 audit, correct?

19 A. Yes.

20 BY MR. MORRIS:

21 Q. Okay. And that's -- looking at it,
22 that's customary language that auditors include
23 in audited financial statements, correct?

24 A. Yep.

25 MR. MORRIS: Can we go to the next

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page, please?

BY MR. MORRIS:

Q. Again, you'll see that this is the Consolidated Balance Sheet for the period ending December 31st, 2018. Do you see that?

A. Yes.

Q. And is it accurate that Highland continued to carry on its balance sheet as an asset all "Notes and Other Amounts Due from Affiliates"?

A. Yes.

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. And you knew -- you knew at the time that the audited financials were finalized that Highland was carrying on its balance sheet "Notes and Other Amounts Due from Affiliates," correct?

A. Yup.

Q. Did you personally tell anybody at PWC in connection with the preparation of the audited financial statements for 2018 that you had entered into the agreement with your sister

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2 Nancy in January or February of 2019?

3 MS. DEITSCH-PEREZ: Object to the
4 form.

5 A. Not that I recall.

6 BY MR. MORRIS:

7 Q. Do you know if anybody told PWC,
8 prior to the completion of the audited
9 financial statements for the period ending
10 December 31st, 2018, of your agreement with
11 Nancy?

12 MS. DEITSCH-PEREZ: Object to the
13 form.

14 A. Not that I know of.

15 BY MR. MORRIS:

16 Q. Did you ever instruct anybody to
17 inform PWC about the agreement you reached with
18 Nancy in --

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 BY MR. MORRIS:

22 Q. -- January --

23 MR. MORRIS: Please let me finish
24 the question.

25 MS. DEITSCH-PEREZ: You took a

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2 breath. Sorry.

3 MR. MORRIS: Are you finished?

4 MS. DEITSCH-PEREZ: Yes. As I

5 explained, you took a breath, and I thought

6 you were done. Sorry.

7 BY MR. MORRIS:

8 Q. Did you ever instruct anybody to
9 inform PWC of your agreement that you reached
10 with Nancy in January or February 2019?

11 MS. DEITSCH-PEREZ: Object to the
12 form.

13 A. No.

14 MR. MORRIS: Can you please go to
15 page 33451?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. And we've got the "Notes and Other
19 Amounts Due from Affiliates." We had gone
20 through all of this before and I'm not going to
21 do it again, but I do want to ask you, sir:
22 Did you personally approve and authorize each
23 of the notes that are reflected in the PWC
24 disclosure concerning Notes and Other Amounts
25 Due from Affiliates?

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2 MS. DEITSCH-PEREZ: Object to the
3 form.

4 A. Repeat the question.

5 Did I personally approve? Was that
6 the question or --

7 BY MR. MORRIS:

8 Q. Yes. Withdrawn.

9 I'll ask a different question.

10 And I'm happy to give you the time
11 needed to look at the full disclosure, but are
12 you aware of any note or other amount due from
13 affiliate that you didn't approve and
14 authorize?

15 A. I'm not aware.

16 MR. MORRIS: Okay. If we could just
17 focus in on that bottom paragraph relating
18 to Mr. Dondero.

19 BY MR. MORRIS:

20 Q. So there's a reference there to your
21 having "issued promissory notes to the
22 Partnership in the aggregate amount of
23 \$14.9 million" during 2018.

24 Do you see that?

25 A. Yes.

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Q. That would include the three notes at issue in this lawsuit; is that right?

MS. DEITSCH-PEREZ: Object to the form.

A. (No response.)

BY MR. MORRIS:

Q. Let me ask a different question.

The three -- the three notes at issue in this lawsuit were all issued in 2018, correct?

A. Yes.

Q. Okay. Do you have a recollection as to what notes account for the difference between the \$8.8 million or so that's at issue in this lawsuit and the \$14.9 million referenced in this disclosure?

A. I don't, other than that -- I believe the audit is accurate and, you know, there could have been principle or interest paydowns. I don't know the reason for the difference.

Q. This disclosure, as it pertains to you, doesn't mention any oral agreement, does it?

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2 A. No.

3 Q. And it doesn't mention any amendment
4 to any of the notes, correct?

5 A. No.

6 Q. It doesn't describe any conditions
7 that have been placed on the collectability of
8 the notes from you, correct?

9 A. No.

10 Q. It doesn't state that the notes
11 might be forgiven upon some conditions
12 subsequent, correct?

13 A. No, it does not.

14 MR. MORRIS: Can we turn to
15 page 33461, please?

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. And these are "Subsequent Events,"
19 and I just want to look through them --
20 withdrawn.

21 You understand that these financial
22 statements are for the period ending
23 December 31st, 2018, correct?

24 A. Yes.

25 Q. And the agreement that you reached

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with Nancy, to the best of your recollection,
occurred in January or February 2019, correct?

(Simultaneous conversation.)

A. Yes --

MS. DEITSCH-PEREZ: Object to the
form.

THE REPORTER: I didn't hear an
answer.

A. Repeat the question again, just in
case.

BY MR. MORRIS:

Q. Sure. The agreement that you -- the
agreement that you reached with Nancy on behalf
of Highland was an agreement that was reached
in January or February 2019, correct?

A. Was in -- the last was in January or
February of '19, yes. Yes.

Q. Okay. So I just want to show you
the entirety of the "Subsequent Events" because
they cover the period from December 31st, 2018,
until the report date of June 3, 2019.

MR. MORRIS: If we could just look
at that.

BY MR. MORRIS:

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2 Q. Is there any reference made to the
3 agreement that you reached with Nancy in
4 January or February 2019?

5 A. No.

6 MS. DEITSCH-PEREZ: And I just want
7 to object for the record that we asked the
8 debtor for all of the Highland financial --
9 audited financial statements. We got
10 highly redacted ones where the debtor has
11 clearly left unredacted only those things
12 it wanted to use while denying Mr. Dondero
13 the unredacted copies. So we do not have
14 here, for him to look at, the unredacted
15 Highland audited financial statements.

16 MR. MORRIS: But this is the only
17 portion of the document -- well, I'm not
18 going to argue.

19 MS. DEITSCH-PEREZ: Yes. You showed
20 us what you wanted to show him in an
21 unredacted (audio distortion) gave him
22 fully redacted copies. I understand that.

23 MR. MORRIS: Yeah, and I'll be happy
24 to submit a unredacted copy to the Judge
25 under seal so that she can see whether or

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2 not there's any other aspect of the
3 financial statements that --

4 MS. DEITSCH-PEREZ: That's fine.

5 MR. MORRIS: -- pertain to the
6 notes.

7 Give me a break. Stop.

8 MS. DEITSCH-PEREZ: I know.

9 Litigation isn't a one-way -- one-way
10 disco.

11 MR. MORRIS: Okay. All right.

12 The next document, please.

13 THE WITNESS: How are we doing on
14 time?

15 MR. MORRIS: We're doing pretty
16 well. I think we're going to fit within --
17 we're not quite an hour back on, but I'm
18 confident that we'll fit within the one- to
19 two-hour -- we'll be done within an hour.
20 That's my point.

21 THE WITNESS: Okay. I'm going to
22 give a hard stop at 2:00. Okay?

23 MR. MORRIS: You can do whatever you
24 want. If we're not finished, we'll just
25 have to figure out a time to come back. So

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let's get through as much as we can, and
we'll see where we are.

BY MR. MORRIS:

Q. The next document is the management
representation letter.

(Exhibit 16 introduced.)

BY MR. MORRIS:

Q. And I would just ask you to look at,
I guess, page 33419 and just confirm for me
that that's your signature.

A. Yes.

Q. Okay. And this contains the same
representations that you made to PWC that we
looked at in the earlier management rep letter,
right?

A. Yes.

Q. Okay. Let's look at the next
document, please.

(Exhibit 17 introduced.)

BY MR. MORRIS:

Q. So PWC issues the audited financials
in June of 2019, and then Highland files for
bankruptcy in October.

Do I have that right?

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2 A. Yes.

3 Q. And at the time Highland filed for
4 bankruptcy, you were the president and CEO of
5 Highland, correct?

6 A. Yes.

7 Q. And you personally authorized
8 Highland's bankruptcy filing, correct?

9 A. On Pachulski's recommendation.

10 Q. But you're the only person who
11 authorized the filing; is that correct?

12 A. Yes.

13 Q. And did you understand -- you have
14 familiarity with bankruptcy proceedings, right?

15 MS. DEITSCH-PEREZ: Object to the
16 form.

17 A. Not this kind of bankruptcy, but,
18 yes, we have experience in bankruptcies.

19 BY MR. MORRIS:

20 Q. And you had experience in the Acis
21 bankruptcy, for example, correct?

22 A. Yes.

23 MS. DEITSCH-PEREZ: Object to the
24 form.

25 BY MR. MORRIS:

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Q. And you understand that debtors in bankruptcy have to make certain disclosures; is that right?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. You can answer.

A. Yes.

Q. And you understand that the purpose of the disclosures is to give interested parties an opportunity to review the financial information relating to the debtors, right?

MS. DEITSCH-PEREZ: Object to the form.

A. Generally.

BY MR. MORRIS:

Q. The debtor is supposed to be transparent. Is that a statement you would agree with?

A. I'd agree the debtor is supposed to be.

Q. So, are you aware that the debtor filed certain schedules in connection with the bankruptcy case?

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2 A. I'm sure they filed many schedules.

3 Q. And did you -- did you review the
4 debtor's schedules before they were filed?

5 A. No.

6 Q. All right. So, here is a summary of
7 the debtor's assets and liabilities that was
8 filed in December -- on December 12th, 2019.

9 Do you see the timeline at the top?

10 A. Yes.

11 Q. And you were still in control of the
12 debtor at that time, correct?

13 A. Yep.

14 Q. And was Mr. Waterhouse responsible
15 for preparing the debtor's Summary of Assets
16 and Liabilities on behalf of Highland at that
17 time?

18 A. I -- I don't know whether DSI was in
19 control at that point. I don't know.

20 Q. Did DSI rely on Mr. Waterhouse and
21 the accounting team for the information that
22 was used to create the debtor's disclosures?

23 MS. DEITSCH-PEREZ: Object to the
24 form.

25 BY MR. MORRIS:

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2 Q. Withdrawn.

3 To the best of your knowledge, did
4 DSI rely on Mr. Waterhouse and the accounting
5 team at Highland in order to prepare the
6 debtor's schedules and financial disclosures?

7 MS. DEITSCH-PEREZ: Object to the
8 form.

9 A. I don't know.

10 BY MR. MORRIS:

11 Q. Did you ever discuss with
12 Mr. Waterhouse the debtor's financial
13 disclosures during the bankruptcy case?

14 A. Nope.

15 Q. Did you ever look at the Summary of
16 Assets and Liabilities that was filed with the
17 Court in December 2019?

18 A. Nope.

19 MR. MORRIS: Turn to the second
20 page, please. Let's just go down right --
21 right there.

22 BY MR. MORRIS:

23 Q. Do you see in part 11 -- part 11
24 pertains to all other assets and in Item
25 Number 71, there's a reference to "Notes

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2 Receivable."

3 A. Yep.

4 Q. And do you see that the Notes
5 Receivable are for an aggregate amount of
6 approximately \$150 million?

7 A. Yep.

8 Q. And it refers to Exhibit D. Do you
9 see that?

10 A. Yes.

11 Q. All right.

12 MR. MORRIS: Can we turn -- go to
13 the next page?

14 BY MR. MORRIS:

15 Q. And exhibit -- this page is Exhibit
16 D.

17 Do you see that?

18 A. Yes.

19 Q. And this shows an aggregate amount
20 of -- the face amount of notes to be the same
21 \$150.3 million that we just saw, correct?

22 MS. DEITSCH-PEREZ: Object to the
23 form.

24 BY MR. MORRIS:

25 Q. We can go back and look, if you

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2 want.

3 A. It seems to tie.

4 Q. Okay. And it was disclosed on the
5 docket in the bankruptcy case that you
6 personally had made Notes Receivable
7 outstanding in the approximate amount of
8 \$9.3 million. Do you see that?

9 A. Yes.

10 Q. Okay.

11 MR. MORRIS: Can we just go to the
12 top? I want to just show the date.

13 BY MR. MORRIS:

14 Q. It's December 13. That's the date
15 that this disclosure is made. Do you see that?

16 A. Yes.

17 Q. And there's a footnote there, number
18 [1], that says "Doubtful or Uncollectible
19 accounts are evaluated at year end." Do you
20 see that?

21 A. Yes.

22 Q. Now, nothing on this document shows
23 any of the notes as being doubtful or
24 uncollectible, correct?

25 A. Correct.

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2 Q. Do you know if the debtor's
3 schedules were ever amended after
4 December 13th, 2019, to reflect "Doubtful or
5 Uncollectible" Notes Receivable?

6 MS. DEITSCH-PEREZ: Object to the
7 form.

8 A. Yeah. I believe the Hunter Mountain
9 56 was written off.

10 BY MR. MORRIS:

11 Q. Okay. Anything else?

12 MS. DEITSCH-PEREZ: Object to the
13 form.

14 A. I -- I don't know.

15 BY MR. MORRIS:

16 Q. Okay. Did you ever ask anyone to
17 amend the debtor's schedules to reflect any
18 Doubtful or Uncollectible receivable that's set
19 forth on this page?

20 A. I did not.

21 Q. Okay.

22 MR. MORRIS: La Asia, I'm actually
23 going to just skip the next exhibit. And
24 if we could go to the one that you and I
25 had marked as 19. We'll just mark it as 18

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for purposes of the deposition.

MS. DEITSCH-PEREZ: I think that's confusing. I don't mind if you just mark 18 as "omitted." I would want a sheet with "18 omitted." That way, your numbering can stay the same.

MR. MORRIS: Okay. That's fine. Thank you. So we'll mark 18 as "omitted", and this will be 19.

(Exhibit 19 introduced.)

BY MR. MORRIS:

Q. Are you aware of -- that the debtor filed disclosures called Statements of Financial Affairs, often referred to as SoFAs?

A. I've heard of the form before, yes.

Q. Did you ever review the debtor's SoFAs?

A. No.

Q. So, do you know who was responsible at Highland for preparing the debtor's SoFAs?

A. No.

Q. Would it have been -- would -- whoever it was, would that person have either been or reported to Frank Waterhouse, as the

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2 CFO?

3 A. I'm sorry. Can you repeat that one
4 more time?

5 Q. I appreciate the fact that you
6 don't -- you can't identify the person who
7 prepared the SoFAs; but within the
8 organizational structure of Highland during the
9 time that you were the CEO, would the person
10 have been either Frank Waterhouse or somebody
11 who reported to Frank Waterhouse?

12 A. Or DSI.

13 Q. Okay.

14 MR. MORRIS: Can we go to page 2,
15 please.

16 (Scrolling.)

17 BY MR. MORRIS:

18 Q. Do you see at number 4 here, there's
19 a reference to payments made to insiders within
20 a year of the bankruptcy case?

21 A. Yup.

22 Q. Are you aware -- withdrawn.

23 Were you aware in December 2019 that
24 Highland was going to disclose all payments
25 made to insiders within a year of the

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2 bankruptcy case?

3 A. No.

4 MR. MORRIS: Let's go to page 19 of
5 34, please.

6 (Scrolling.)

7 MR. MORRIS: If we could, scroll
8 down near the bottom.

9 BY MR. MORRIS:

10 Q. You'll see that there's two entries
11 for Highland Capital Management Fund Advisors.
12 Do you see that?

13 A. Yup.

14 Q. And in May 2019, the debtor paid
15 Highland Capital Management Fund Advisors the
16 aggregate amount of \$7.4 million. Am I reading
17 that correctly?

18 A. Yes.

19 Q. Okay. And those payments were -- in
20 exchange for those payments, Highland received
21 two promissory notes, correct?

22 MS. DEITSCH-PEREZ: John, I'm going
23 to object. You're straying from the
24 subject of this adversary and going into
25 another, and I'm really not comfortable

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2 with that since he's only prepared for
3 his -- his -- for this proceeding and has
4 not refreshed himself on anything else.
5 So, this is outside of what the scope of
6 this deposition ought to be.

7 MR. MORRIS: Okay. So you have two
8 choices, Deborah: You can either state
9 your objection, "beyond the scope," or you
10 can direct the witness not to answer.
11 Which would you like to do?

12 MS. DEITSCH-PEREZ: I am going to
13 state my objection that it's beyond the
14 scope, but I'm asking you because -- as a
15 matter of fairness, that you restrain
16 yourself and limit your deposition to this
17 adversary proceeding --

18 MR. MORRIS: Okay. I appreciate --

19 MS. DEITSCH-PEREZ: -- and not --

20 (Simultaneous conversation.)

21 MS. DEITSCH-PEREZ: And if the
22 witness isn't prepared to answer these
23 questions, it's not fair that you proceed
24 on them.

25 MR. MORRIS: Okay. So I'll just say

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that for a couple of questions to ask the former CEO about a 7.4 million-dollar payment made to an affiliate that he owns or controls, I'm going to ask you to give me a little latitude.

BY MR. MORRIS:

Q. Mr. Dondero, were those two payments backed up by promissory notes in favor of the debtor, to the best of your knowledge?

A. I don't know.

Q. Okay.

MR. MORRIS: Let's go to the next page, please.

Can we go towards the middle of the page. Right there. That's fine.

BY MR. MORRIS:

Q. Do you see your name, James Dondero, there?

A. Yes.

Q. And you were paid \$3.75 million within a year of the bankruptcy, correct?

A. Yes.

Q. Who determined that you should -- who made the decision for Highland to pay you

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that amount?

A. Me? I don't know.

Q. Is there anybody else who had the authority to determine your compensation prior to the petition date, other than yourself?

A. Especially -- besides myself -- okay. Let me answer that question first.

The Class A -- majority Class A holders can, and then I can.

Q. Anybody else?

A. Not that -- not that I know.

Q. In practice, did anybody other than you set your compensation?

A. In practice, yes, sometimes majority Class A did.

Q. And at any time prior to the petition date, can you think of an instance where the majority of the Class A refused to compensate you in the manner in which you wanted?

A. There was -- no, because there was no reason to because there was plenty of head room in all the agreements and compared to market levels.

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2 MR. MORRIS: Let's go to the next
3 document, please.

4 (Exhibit 20 introduced.)

5 BY MR. MORRIS:

6 Q. Are you aware that, during the
7 course of the bankruptcy proceeding, the
8 debtor, in addition to the schedules and SoFAs,
9 also filed every month a document called the
10 "Monthly Operating Report"?

11 A. I'm not aware, specifically.

12 Q. Did you ever review any of the
13 debtor's Monthly Operating Reports?

14 A. Not that I can recall.

15 Q. Okay.

16 MR. MORRIS: We can scroll down a
17 bit.

18 BY MR. MORRIS:

19 Q. You see there's -- there's two
20 signatures here: One electronic, one
21 handwritten, both dated December 2nd. Do you
22 see that Brad Sharp has signed as an authorized
23 individual as the Chief Restructuring Officer?

24 A. Yup.

25 Q. Okay. And then below that, there's

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the electronic signature of Mr. Waterhouse. Do you see?

A. Yes.

Q. Okay. Were -- to the best of your knowledge as the CEO at the time, were Mr. Sharp and Mr. Waterhouse authorized to sign and file Monthly Operating Reports with the Court?

A. Again, it's not my sphere of knowledge. It looks like -- individually or jointly, I -- I don't have a comment.

Q. I'm just asking you, as the CEO, did you expect Mr. Waterhouse and Mr. Sharp to take care of all financial disclosures required under the bankruptcy code?

A. Yes.

Q. And did you expect them to do that completely, transparently and accurately?

A. Yes.

Q. Do you have any reason to believe that they failed to do so?

A. Not that I'm aware.

MR. MORRIS: Can we go to page 6 of

11?

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2 (Scrolling.)

3 BY MR. MORRIS:

4 Q. You haven't seen this document
5 before; is that right?

6 A. I do not believe so.

7 Q. Okay. But you see that it was filed
8 in late January 2020, but it was signed in
9 December, right?

10 A. Yeah.

11 Q. Okay. And do you see that among the
12 assets listed are amounts "Due from
13 affiliates"?

14 A. Yep.

15 Q. And do you have any reason to
16 believe that the amounts due from affiliates
17 are anything other than the same notes and
18 amounts due that we saw in the audited
19 financial statements?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 A. I don't know.

23 BY MR. MORRIS:

24 Q. Okay.

25 THE WITNESS: I do look at this and

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get wistful. You guys should be ashamed of yourselves, what you've done to this company.

MR. MORRIS: I move to strike.

Can we take a look at footnote (1), please?

BY MR. MORRIS:

Q. Do you see that it "Includes various notes receivable at carrying value"?

Do you have any understanding of what that --

MS. DEITSCH-PEREZ: You didn't state the whole sentence, John. Please, if you're going to point him to things, read him the whole sentence.

BY MR. MORRIS:

Q. Sir, do you have any understanding as to what footnote (1) refers to or means?

A. It says what it says.

Q. Okay.

MR. MORRIS: Let's look at the next document, please.

(Exhibit 21 introduced.)

MR. MORRIS: All right. So if you

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2 could just stop right there.

3 BY MR. MORRIS:

4 Q. This is the Monthly Operating Report
5 for the period ending November 2019. Do you
6 see that?

7 A. Yes.

8 MR. MORRIS: Can we scroll down a
9 bit?

10 BY MR. MORRIS:

11 Q. And that's Mr. Sharp's and
12 Mr. Waterhouse's signatures, correct?

13 A. Yes.

14 Q. Do you see on this version,
15 Mr. Sharp is identified as the "Responsible
16 Party," but Mr. Waterhouse is identified as the
17 "Preparer"?

18 A. Yes.

19 Q. Do you recall ever telling Mr.
20 Waterhouse, in his capacity as the preparer of
21 Monthly Operating Reports, that there was
22 anything inaccurate in any Monthly Operating
23 Report filed by the debtor?

24 A. No.

25 Q. Do you recall ever telling

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Mr. Sharp, as the responsible party, that there was anything inaccurate in any monthly -- Monthly Operating Report filed by the debtor?

A. No.

MR. MORRIS: Can we go to the next page, please?

(Scrolling.)

THE WITNESS: I'm going to give the 12-minute warning here. I can be back at 4:00, but I'm going to need a couple hours.

MR. MORRIS: I'm trying to finish up, okay?

THE WITNESS: Okay.

MR. MORRIS: I'd rather not come back, to be honest with you.

Can we go to the next page, please?

BY MR. MORRIS:

Q. Again, the debtor reported that the amounts due from affiliates were assets of the debtor's estate, correct?

A. Yep.

Q. Do you -- do you have any issue with the fact that the debtor reported the notes, including your own notes, as assets of the

Dondero - 5-28-2021

estate?

MS. DEITSCH-PEREZ: Object to the
form.

A. Until they're forgiven, they're bona
fide notes.

BY MR. MORRIS:

Q. And you don't think the "conditions
subsequent" agreement that you entered into
with Nancy calls into question whether the
debtor would ever recover on their notes that
you issued to them?

MS. DEITSCH-PEREZ: Object to the
form.

A. Again, I don't believe it's material
or GAAP, is my understanding.

BY MR. MORRIS:

Q. Well, almost a third of the debtor's
assets are notes "Due from affiliates," right?

A. You have to back out Hunter
Mountain, and you have to back out -- you have
to back out about 80 million to get to the 70
million of affiliated notes; and then, from
there, you have to back out 60 of them to get
to the 9 million.

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2 MS. DEITSCH-PEREZ: Mr. Morris,
3 please don't make faces at Mr. Dondero.

4 BY MR. MORRIS:

5 Q. Why -- why are we backing out Hunter
6 Mountain?

7 A. I think the Hunter Mountain -- there
8 were notes going both ways, but I think the
9 Hunter Mountain is out of the estate, I
10 believe.

11 Q. But Hunter Mountain -- the debtor
12 held notes that were made by Hunter Mountain in
13 the approximate amount of \$60 million, right?

14 A. But subsequent to these dates, I
15 think -- I think they realized it was just a
16 cross-transaction. There were dues and
17 payables that were essentially equal from
18 Hunter Mountain, so I think Hunter Mountain
19 came out of that.

20 Q. Isn't it -- isn't it a fact that
21 they wrote them off because they didn't believe
22 they were collectible?

23 A. Yeah, because the payment on those
24 notes depended upon Highland honoring its
25 agreements to Hunter Mountain, which Highland

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had no intention of doing. So, there's no ability for Hunter Mountain to pay Highland.

Q. Does Highland -- does Hunter Mountain today have the ability to pay back any of the \$60 million that it -- that was reflected in the notes?

MS. DEITSCH-PEREZ: Object.

A. No, not that I know of but --

BY MR. MORRIS:

Q. Okay.

MS. DEITSCH-PEREZ: And, Mr. Morris, once again, I think we're straying from this adversary.

MR. MORRIS: Can we go to page 5 of 9, please?

(Scrolling.)

MR. MORRIS: Above that, I think. Next page, 5 of 9. We must be looking at the wrong exhibit.

Is the one that was marked 22? No, it's the next -- I believe it's the next document.

Let's pull up the next document, please.

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2 (Exhibit 22 introduced.)

3 MR. MORRIS: Yeah, that's it.

4 Go to page 5, please. Thank you.

5 BY MR. MORRIS:

6 Q. Do you see that box there? It says
7 "Non-Operating Receipts - Other."

8 A. Yes.

9 Q. Okay. And do you understand that
10 that shows that, in December 2019, while you
11 were still personally in control of the debtor,
12 that certain payments of "principle or
13 interest" were made with respect to notes made
14 in favor of the debtor?

15 A. Yes.

16 Q. Okay. And do you understand that
17 the one dated December 23rd in the approximate
18 amount of \$783,000, that was a payment that was
19 made by you?

20 MS. DEITSCH-PEREZ: Object to the
21 form.

22 A. If you say so. I don't have a basis
23 for denying it or confirming it.

24 BY MR. MORRIS:

25 Q. Okay. But it's true, you do recall

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that in December 2019, after the petition date, while you were still in control of the debtor, that certain payments of principal and interest were made on notes that were made in favor of the debtor, correct?

MS. DEITSCH-PEREZ: Asked -- asked and answered about an hour ago.

BY MR. MORRIS:

Q. You can answer, sir.

A. I believe -- I believe so.

Q. Thank you. Do you recall that in connection with its Plan and Disclosure Statement, that the debtor prepared a Liquidation Analysis?

A. Yes.

MR. MORRIS: Can we call the next document up on the screen, please?

(Exhibit 23 introduced.)

MR. MORRIS: And if we can go to the next page.

BY MR. MORRIS:

Q. Your lawyers and lawyers acting on behalf of entities you own and control or otherwise have an interest spent considerable

1 Dondero - 5-28-2021

2 time on the debtor's Liquidation Analysis and
3 confirmation.

4 Do you remember that?

5 A. I can't -- I can't agree or disagree
6 with that.

7 BY MR. MORRIS:

8 Q. Okay. Did you personally review the
9 debtor's Liquidation Analysis?

10 A. Briefly.

11 Q. Okay.

12 MR. MORRIS: Can we go to the next
13 page, please?

14 BY MR. MORRIS:

15 Q. Do you see that this page contains a
16 list of "Assumptions"?

17 A. Yes.

18 MR. MORRIS: And can we scroll up a
19 little further so we can see the date?

20 BY MR. MORRIS:

21 Q. You'll see that on November 24th,
22 2020, the debtor filed a Liquidation Analysis
23 that contained, as among the Assumptions,
24 quote, "All demand notes are collected in the
25 year 2021." Do you see that?

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2 A. Yes.

3 Q. Did you or anybody acting on your
4 behalf ever inform the Court that you believed
5 that assumption was unreasonable?

6 A. I -- I don't know, but I know we've
7 been fighting the notes consistently through
8 various mechanisms.

9 Q. Okay. Did you or anybody acting on
10 your behalf ever inform the Court of your
11 agreement with Nancy?

12 MS. DEITSCH-PEREZ: Object to the
13 form.

14 A. Not -- not that I know of.

15 BY MR. MORRIS:

16 Q. Did you ever instruct anybody to
17 inform the Court that you had an agreement with
18 Nancy that rendered Assumption C unreasonable?

19 MS. DEITSCH-PEREZ: Object to the
20 form.

21 A. I did not.

22 MR. MORRIS: Let's look at the last
23 document, please.

24 (Exhibit 24 introduced.)

25 BY MR. MORRIS:

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2 Q. Do you recall that there came a time
3 just prior to the confirmation hearing that the
4 debtor amended its Liquidation Analysis?

5 A. No. Okay. Yes.

6 MR. MORRIS: Okay. And if we could
7 go to the next page.

8 BY MR. MORRIS:

9 Q. You'll see at the bottom right-hand
10 corner it's dated January 28th, 2021.

11 MR. MORRIS: We wanted page up but
12 just -- yeah, page up, the assumptions.
13 Yeah, right there.

14 BY MR. MORRIS:

15 Q. You see it's dated January 28, 2021?

16 A. Yes.

17 Q. Okay. And let's look at Assumption
18 C. It's been amended somewhat.

19 And it now says, quote: "All demand
20 notes are collected in the year 2021; 3 term
21 notes defaulted and have been demanded based on
22 default provisions; payment estimated in 2021."

23 Do you see that?

24 A. Yes.

25 Q. Did you or anybody on your behalf

1 Dondero - 5-28-2021

2 ever inform the Court that this assumption was
3 unreasonable?

4 MS. DEITSCH-PEREZ: Object to the
5 form.

6 A. Yes. Well, Lynn wrote a letter to
7 all the counsels, which I think ended up being
8 put in the Court record, that the notes were
9 all subject to defenses and could not be
10 considered unencumbered, I think, if they're
11 sold, or whatever. He was -- he was -- he --
12 he realized the attitude towards the notes had
13 shifted, and he penned something to everybody
14 and to make the notes so that they couldn't be
15 sold without notifying people that there were
16 good defenses to them.

17 BY MR. MORRIS:

18 Q. Did you or anybody acting on your
19 behalf ever challenge this assumption in
20 connection with the debtor's confirmation
21 hearing?

22 MS. DEITSCH-PEREZ: Object to the
23 form, asked and answered.

24 A. Yeah. I think Lynn's letter
25 objected to that vehemently. It was just

Dondero - 5-28-2021

ignored.

BY MR. MORRIS:

Q. Do you know anything else --
anything else you're aware of?

A. I think that's powerful enough.

Q. That's not my question, sir. My
question is: Are you aware of any other facts
that you're relying upon to answer my question
as to whether or not you or anybody acting on
your behalf informed the Court that Assumption
C is unreasonable?

MS. DEITSCH-PEREZ: Object to the
form.

A. Just the Lynn letter. I have no
other specific awareness.

MR. MORRIS: Thank you very much. I
have no further questions. Thank you so
much, folks. Been a pleasure.

MS. DEITSCH-PEREZ: Reserve until
trial.

(Time Noted: 1:59 p.m.)

Dondero - 5-28-2021

C E R T I F I C A T E
STATE OF TEXAS)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public
within and for the State of Texas, do
hereby certify:

That JAMES DONDERO, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
such witness.

That pursuant to Rule 30 of the Federal
Rules of Civil Procedure, signature of the
witness was not reserved by the witness or
other party before the conclusion of the
deposition;

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 28th day of May, 2021.



Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

Dondero - 5-28-2021

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)
HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
Debtor,) Chapter 11
-----)
HIGHLAND CAPITAL MANAGEMENT,)
LP,)
)
Plaintiff,) Adversary No.
vs.) 21-03003-sgi
JAMES D. DONDERO,)
Defendant.)

Dep. Date: 05/28/2021
Deponent: JAMES DONDERO

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

CORRECTIONS:

Pg.	LN.	Now Reads	Should Read	Reason
17	---	-----	-----	-----
18	---	-----	-----	-----
19	---	-----	-----	-----
20	---	-----	-----	-----
21	---	-----	-----	-----
22	---	-----	-----	-----
23	---	-----	-----	-----
24	---	-----	-----	-----
25	---	-----	-----	-----

Dondero - 5-28-2021

JAMES DONDERO

SUBSCRIBED AND SWORN BEFORE ME
THIS _____ DAY OF _____, 2021.

(Notary Public) MY COMMISSION EXPIRES: _____

1 Dondero - 5-28-2021

2 -----I N D E X-----

3 WITNESS: EXAMINATION BY PAGE:

4 JAMES DONDERO

5 Mr. Morris 107

6

7 -----EXHIBITS-----

8 Defendant's PAGE/LINE

9 Exhibit 1 2/2/2020 Promissory Note 108/16
2 pages

10

11 Exhibit 2 February 2020 Highland 118/21
Capital Management, L.P.
Operating Results
12 12 pages

13 Exhibit 3 8/1/2020 Promissory Note 121/8
2 pages

14

15 Exhibit 4 8/13/2018 Promissory Note 127/2
2 pages

16 Exhibit 5 August 2018 Highland 130/14
Capital Management, L.P.
Operating Results
17 9 pages

18

19 Exhibit 6 12/3/2020 Demand Letter 132/11
3 pages

20 Exhibit 7 Defendant James Dondero's 136/8
Original Answer
21 8 pages

22 Exhibit 8 Defendant James Dondero's 158/2
Objections and Responses
23 to Highland Capital
Management, L.P.'s First
24 Request For Admissions
6 pages

25

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-----EXHIBITS-----

Defendant's PAGE/LINE

Exhibit 9 Defendant James Dondero's 160/23
 Objections and Answers to
 Highland Capital
 Management, L.P.'s First
 Set of Interrogatories
 6 pages

Exhibit 10 Defendant James Dondero's 169/10
 Amended Answer
 8 pages

Exhibit 11 Defendant James Dondero's 191/8
 Objections and Responses
 to Highland Capital
 Management, L.P.'s Second
 Request For Admissions
 5 pages

Exhibit 12 Exhibit 20, Defendant 206/4
 James Dondero's Objections
 and Answers to Highland
 Capital Management, L.P.'s
 Second Set of Interrogatories
 7 pages

Exhibit 13 Highland Capital 220/20
 Management, L.P.'s
 Consolidated Financial
 Statements and
 Supplemental Information
 12/31/2020
 48 pages

Exhibit 14 5/18/2020 Management 234/21
 Representation Letter
 11 pages

Exhibit 15 Highland Capital 237/3
 Management, L.P.'s Consolidated
 Financial Statements and
 Supplemental Information
 12/31/2018
 46 pages

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-----EXHIBITS-----

Defendant's PAGE/LINE

Exhibit 16	6/3/2019 Management Representation Letter	247/7
	11 pages	

Exhibit 17	12/13/2019 Summary of Assets and Liabilities For Nonindividuals	247/20
	3 pages	

Exhibit 18	(Skipped by Agreement)	
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Exhibit 19	12/13/2019 Statement of Financial Affairs For Nonindividuals Filing Bankruptcy	255/11
	42 pages	

Exhibit 20	10/31/2019 Monthly Operating Report	261/4
	11 pages	

Exhibit 21	10/31/2019 Monthly Operating Report	264/24
	11 pages	

Exhibit 22	December 2019 Monthly Operating Report	270/2
	9 pages	

Exhibit 23	Exhibit C, Liquidation Analysis/Financial Projections	271/19
	8 pages	

Exhibit 24	1/28/2021 Highland Capital Management LP Disclaimer For Financial Projections	273/24
	7 pages	